

1 STATE OF MINNESOTA DISTRICT COURT

2 COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT

3 - - - - -

4 The State of Minnesota,

5 by Hubert H. Humphrey, III,

6 its attorney general,

7 and

8 Blue Cross and Blue Shield

9 of Minnesota,

10 Plaintiffs,

11 vs. File No. C1-94-8565

12 Philip Morris Incorporated, R.J.

13 Reynolds Tobacco Company, Brown &

14 Williamson Tobacco Corporation,

15 B.A.T. Industries P.L.C., Lorillard

16 Tobacco Company, The American

17 Tobacco Company, Liggett Group, Inc.,

18 The Council for Tobacco Research-U.S.A.,

19 Inc., and The Tobacco Institute, Inc.,

20 Defendants.

21 - - - - -

22

23 DEPOSITION OF RICHARD C. NORDINE

24 Volume I, Pages 1 - 265

25

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1 (The following is the deposition of
2 RICHARD C. NORDINE, taken pursuant to Notice of
3 Taking Deposition, at the offices of Kilpatrick
4 Stockton LLP, Attorneys at Law, 1001 West Fourth
5 Street, Winston-Salem, North Carolina, on May 8,
6 1997, commencing at approximately 8:41 o'clock a.m.)

7

8

9 APPEARANCES:

10

11 On Behalf of the Plaintiffs:

12 Bruce A. Finzen and Daniel A. O'Fallon

13 Robins, Kaplan, Miller & Ciresi

14 2800 LaSalle Plaza

15 800 LaSalle Avenue

16 Minneapolis, Minnesota 55402-2015

17

18 On Behalf of Philip Morris Incorporated:

19 James D. Layden

20 Arnold & Porter

21 777 South Figueroa Street, 44th Floor

22 Los Angeles, California 90017-2513

23

24

25

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1 On Behalf of R.J. Reynolds Tobacco Company:

2 Kim F. Bixenstine

3 Jones, Day, Reavis & Pogue

4 North Point, 901 Lakeside Avenue

5 Cleveland, Ohio 44114

6

7 Jonathan M. Redgrave

8 Gray Plant Mooty

9 3400 City Center

10 33 South Sixth Street

11 Minneapolis, Minnesota 55402-3796

12

13 On Behalf of the Witness:

14 Daniel R. Taylor, Jr.

15 Kilpatrick Stockton LLP

16 1001 West Fourth Street

17 Winston-Salem, North Carolina 27101-2400

18

19 ALSO PRESENT:

20 Thomas F. McKim

21 Assistant General Counsel - Litigation

22 R.J. Reynolds Tobacco Company

23

24

25

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1 Stephen B. Murray, Jr.
2 Murray Law Firm
3 Suite 2550 LL&E Tower
4 909 Poydras Street
5 New Orleans, Louisiana 70112-4000

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1 I N D E X

2	EXHIBITS	DESCRIPTION	PAGE MARKED
3	Nordine 1023	Protective Order with	
4		Exhibits A-C	91
5	1024	Cigarette Advertising Code,	
6		Bates MNAT00608606-14	91
7	1025	December 9, 1959 letter,	
8		MacGovern to Sugg, Bates	
9		50111 3723-30	102
10	1026	July 9, 1980 letter, Duffy	
11		to Frydman, Bates 50125	
12		4289-301	109
13	1027	March 15, 1974 letter,	
14		Stuart to Odesky, Bates	
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16	1028	April 9, 1968 letter, Haller	
17		to Blevins, Bates 50140	
18		0341-2	128
19	1029	September 26, 1972 letter,	
20		Sherrill to Smith, Bates	
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1	1031	February 29, 1984 Strategic	
2		Research Report, Bates 50192	
3		8462-550	166
4	1032	April 13, 1984 letter,	
5		Nordine to Fackelman, Bates	
6		50203 3156-7	202
7	1033	September 20, 1982 letter,	
8		Burrows to Galyan, Bates	
9		50198 8846-9	211
10	1034	July 16, 1984 letter,	
11		Nordine to Burrows, et al.,	
12		Bates 50203 4727-8	219
13	1035	1975 Marketing Plans	
14		Presentation, Bates 50142	
15		1310-35	236
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17		Company Domestic Operating	
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19	1037	January 23, 1975 letter,	
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1 P R O C E E D I N G S

2 (Witness sworn.)

3 (Mr. Murray was not present at the
4 commencement of the deposition.)

5 RICHARD C. NORDINE

6 called as a witness, being first duly
7 sworn, was examined and testified
8 as follows:

9 ADVERSE EXAMINATION

10 BY MR. FINZEN:

11 Q. Would you please state your full name and
12 address for the record.

13 A. My name is Richard Charles Nordine. I live at
14 [DELETED].

15 Q. Mr. Nordine, my name is Bruce Finzen. I'm one
16 of the attorneys for the State of Minnesota and Blue
17 Cross Blue Shield in a lawsuit that they have
18 commenced against Philip Morris and others, and you
19 are here this morning to give a deposition in that
20 proceeding. Do you understand that?

21 A. Yes, I do.

22 Q. And I understand that you are here this morning
23 pursuant to a subpoena.

24 A. Yes.

25 Q. Would you please tell me by whom you're

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1 currently employed.

2 A. I am semiretired. I have started a new business
3 with my brother, which I receive about -- which I
4 work for about 25 percent of my time. Other than
5 that, I live on my savings.

6 Q. And what business is that? Does it have a name?

7 A. The name is Containerless Research,
8 Incorporated.

9 Q. And what kind of a business is that?

10 A. It's an R&D business.

11 Q. Directed towards what technology?

12 A. Well they're fairly scientific names. Let me do
13 what I can with it because I'm not a technical
14 person. We make things called polarimeters. We make
15 something called an aero-acoustic levitator, and we
16 conduct rather fundamental research in material
17 science.

18 Q. And where is that business located?

19 A. It's located in Chicago; Evanston, Illinois, in
20 fact.

21 Q. And how long have you been working in this
22 current position?

23 A. I believe since 1993.

24 Q. And that, you say, occupies about 25 percent of
25 your time?

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- 1 A. That's right.
- 2 Q. And the other twenty -- or the other 75 percent,
- 3 do you have other employment?
- 4 A. I do not, no.
- 5 Q. Between --
- 6 Prior to 1993, by whom were you employed?
- 7 A. I was employed by R.J. Reynolds Tobacco Company.
- 8 Q. And when did you leave R.J. Reynolds?
- 9 A. I think it was the fall of 1991 I was put on
- 10 inactive payroll. That expired in approximately nine
- 11 months afterward.
- 12 Q. So sometime in the first half of 1992 you would
- 13 have --
- 14 A. Mid-'92 is what I would say. I no longer
- 15 received compensation from them after mid-'92.
- 16 Q. What does inactive payroll mean?
- 17 A. They just continued sending me my regular
- 18 payroll check for doing anything that they asked of
- 19 me during that -- that period.
- 20 Q. All right. When did you first begin working for
- 21 RJR Tobacco?
- 22 A. 1975.
- 23 Q. And were you employed continuously on an active
- 24 payroll basis between 1975 and 1991?
- 25 A. Yes.

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1 Q. Now between mid-1992 when you went off of the
2 RJR inactive payroll and 1993 when you started your
3 current employment, did you have other employment in
4 the interim?

5 A. No.

6 Q. During that period of time, from the fall of
7 1991 on when you went on inactive payroll, what
8 duties did you perform for R.J. Reynolds during that
9 period of time?

10 A. They did not ask me to do anything during that
11 time.

12 Q. Is the inactive payroll program that you were on
13 a program that has been in existence for some time at
14 R.J. Reynolds, available to all employees?

15 MS. BIXENSTINE: Objection, calls for
16 speculation.

17 MR. FINZEN: You may answer.

18 A. As far as I know. I don't know.

19 Q. And how is it that you came to go on to the
20 inactive payroll program?

21 A. I was just told that's what they would do for
22 me.

23 Q. Did you come to them and inquire about it?

24 A. No, I did not.

25 Q. Did they come to you and talk to you about going

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1 on to the program?

2 A. Yes.

3 Q. Who spoke to you about it the first time?

4 A. I don't recall.

5 Q. Would it have been someone who was a supervisor
6 of yours?

7 A. Possibly, probably, perhaps. I don't recall
8 specifically.

9 Q. Was that program run through some sort of
10 personnel area within R.J. Reynolds?

11 MS. BIXENSTINE: Objection, calls for
12 speculation.

13 A. I don't know.

14 Q. Well how did you first hear that there was an
15 inactive payroll program available to R.J. Reynolds
16 Tobacco?

17 A. I was just told it one -- in my case. That's
18 all I know.

19 Q. Well were you told that this was something that
20 was applicable just to you?

21 A. I don't recall, sir.

22 Q. In the period of time from 1975 till 1991 while
23 you were at the company, did you know any other
24 employees who went on inactive payroll status?

25 A. No, I did not.

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1 Q. And when whoever it is, the name of whom you do
2 not recall, came to you to talk about the program,
3 had you heard about the program prior to that time?

4 A. No.

5 Q. Did you get any written materials explaining the
6 R.J. Reynolds inactive payroll program?

7 A. I'm not sure. I don't know.

8 Q. Did you enter into any kind of a written
9 agreement with R.J. Reynolds Tobacco with regard to
10 going on to the inactive payroll program?

11 A. Yes, I did.

12 Q. Do you recall what the title of that agreement
13 was?

14 A. I don't recall the title.

15 Q. And do you recall what the agreement provided or
16 called for? I guess what I'm saying: What -- what
17 were the terms of that agreement?

18 A. There were many of them.

19 Q. Tell me as many as you can remember.

20 A. One that I noticed was that I cannot do things
21 which would undermine employee morale of the people
22 that were there during the time of my inactive
23 payroll.

24 Q. Okay.

25 A. Anything else would be speculation because I do

1 not remember the document in -- in any kind of
2 specific detail.

3 Q. Do you still have the agreement?

4 A. I believe so, yes.

5 Q. And was the payroll program that you were put on
6 the same as the payroll you had been on until 1991,
7 immediately before going on inactive payroll?

8 A. Yes.

9 Q. Do you recall whether the written agreement
10 provided for the kinds of activities that you could
11 call -- be called upon to perform for R.J. Reynolds?

12 A. Could you be more specific.

13 Q. Sure. You said that during that period of
14 inactive payroll it was your understanding that you
15 were to perform any duties that they called you to
16 do.

17 A. Uh-huh.

18 Q. And I'm asking whether the agreement addressed
19 what those duties might be.

20 A. Not specifically.

21 Q. Did they address them in a general way?

22 A. I believe what is meant by that is that there
23 could well be questions about some project that I had
24 involvement with be -- before I left, and they wanted
25 the right to ask me questions regarding something

1 that might have been ongoing. And that was the
2 nature of the -- of the thing in my recollection.

3 Q. Were there any special types of duties that you
4 recall discussing with anyone that were to be
5 performed or could be performed under the inactive
6 payroll?

7 A. There was nothing done on that inactive
8 payroll. I never talked with anybody about that
9 provision, even though it was allowed for.

10 Q. So it was in the agreement you recall, but
11 you -- you had no specific discussions at the time
12 you entered into the agreement?

13 A. That's right.

14 Q. At the time that you went on inactive payroll,
15 who was your supervisor at that time, your immediate
16 supervisor?

17 A. Lynn Beasley.

18 Q. And is that a -- a man, Lynn?

19 A. No, it's a woman.

20 Q. What was her duty, her -- her title, I'm sorry,
21 at that time?

22 A. I don't recall.

23 Q. Mr. Nordine -- Nordine, what is your date of
24 birth?

25 A. November 18, 1944.

- 1 Q. What area did Lynn Beasley work in at RJR?
- 2 A. She was in marketing.
- 3 Q. How many people reported to you at the time that
- 4 you left the active payroll in 1991?
- 5 A. I believe there was one.
- 6 Q. And who was --
- 7 A. I'm sorry. Let me -- let -- let me clarify
- 8 that. I believe there were two.
- 9 Q. What was your title in 1991 when you left the
- 10 active payroll?
- 11 A. I believe it was director of new business
- 12 development.
- 13 Q. And who were the people you recall reporting to
- 14 you?
- 15 A. A man named Cal Faino.
- 16 Q. Okay.
- 17 A. And a secretary named Astrid McDaniel. I'm
- 18 sorry, Astrid Saylor.
- 19 Q. And Mr. Faino, what -- what was his title?
- 20 A. I don't recall specifically.
- 21 Q. What --
- 22 What were your duties as director of new
- 23 business development in 1991?
- 24 A. It was to identify new business opportunities
- 25 for the company.

1 Q. In --
2 In the cigarette business?
3 A. Yes.
4 Q. How long had you been in that position?
5 A. I would say nine months to a year is all.
6 Q. And immediate --
7 Your immediate position before director of new
8 business development was what?
9 A. I am speculating a bit on these specifics
10 because it is difficult for me to tell. I believe my
11 title was director of strategic research, but I am
12 not sure.
13 Q. And what is it that you're unsure of?
14 A. Well there were several events where things
15 changed rather rapidly at that time, so that I'm not
16 sure whether I was for a short time here or a short
17 time there and it is -- it is difficult with
18 certainty to say exactly what the sequence is.
19 Q. All right. You're saying your title changed
20 several times in a short period of time?
21 A. I think it could well have, yes.
22 Q. All right. Let's -- let's try to identify what
23 those titles were and put, to the best of your
24 ability, the dates that you believe you occupied
25 those titles.

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- 1 A. Okay.
- 2 Q. If looking at 1990, director of strategic
3 research, what was -- what do you believe was your
4 most immediate before that title?
- 5 A. I believe that the title before that was
6 director of strategic marketing.
- 7 Q. And when do you believe you occupied that
8 position?
- 9 A. Oh, for about maybe a year and a half or two
10 years before 1990.
- 11 Q. So somewhere perhaps in early to mid-1989?
- 12 A. That would be my best guess.
- 13 Q. And what was your title immediately prior to
14 director of strategic marketing?
- 15 A. It would have been group manager of strategic
16 research.
- 17 Q. And how long did you occupy that position?
- 18 A. My estimate is about five, six years.
- 19 Q. So somewhere perhaps beginning in 1983?
- 20 A. On -- in that neighborhood.
- 21 Q. And what position with R.J. Reynolds did you
22 occupy immediately before group manager of strategic
23 research?
- 24 A. Again I'm un -- unsure, but let me just say that
25 it would be manager of quantitative methods would be

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1 my best recollection.

2 Q. And how long did you occupy that position?

3 A. Perhaps a year and a half.

4 Q. And immediately prior to that, what was your
5 position?

6 A. Let me say that it would be statistician, but
7 there are some miscellaneous changes in names; the
8 job did not change. The next job that I had would --
9 that would have been different would have been
10 statistician.

11 Q. And how long were you in a statistician
12 position?

13 A. I would say perhaps two years.

14 Q. So we're roughly in the late '70s now
15 approximately, if --

16 A. Uh-huh.

17 Q. -- I'm calculating this correctly. What
18 position did you occupy before statistician?

19 A. It was called an associate statistician, which
20 was my first position with the company.

21 Q. Where were you employed before coming to R.J.
22 Reynolds?

23 A. I worked for a marketing research company named
24 Nordhaus Associates.

25 Q. What did you do at Nordhaus?

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- 1 A. I was a market research analyst.
- 2 Q. How long with them?
- 3 A. Approximately two years.
- 4 Q. With Nordhaus did you do market research
- 5 analysis for the tobacco industry?
- 6 A. No.
- 7 Q. Had you done any work in a -- in any capacity
- 8 before coming to R.J. Reynolds for any tobacco
- 9 company?
- 10 A. No.
- 11 Q. And by whom were you employed before Nordhaus
- 12 Associates?
- 13 A. That was my first job out of school.
- 14 Q. Where did you attend school?
- 15 A. I went to Michigan State University.
- 16 Q. And you graduated with what degree?
- 17 A. I was there some time. I got my bachelor of
- 18 arts from Michigan State. I've got a master's of
- 19 science degree at Michigan State, and I've got a
- 20 second master's degree from Michigan State.
- 21 Q. What's your first master's in?
- 22 A. Mathematics. I'm -- yeah, mathematics, that's
- 23 correct.
- 24 Q. And what year did you get your B.A. at Michigan
- 25 State?

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- 1 A. 1966.
- 2 Q. And your M.S. in math, what --
- 3 A. '68.
- 4 Q. And your second M.S. is in what field?
- 5 A. Statistics.
- 6 Q. In what year did you obtain that?
- 7 A. I think it was 1973.
- 8 Q. Also from Michigan State?
- 9 A. Yes.
- 10 Q. And where is the Nordhaus Associates group
- 11 located?
- 12 A. It was in Farmington Hills, Michigan.
- 13 Q. How is it that you left Nordhaus and came to
- 14 R.J. Reynolds in 1975?
- 15 A. I had talked with a headhunter. He made me
- 16 aware of an open position, and I interviewed for the
- 17 position.
- 18 Q. And that was the entry-level position of
- 19 associate statistician?
- 20 A. That was not an entry position.
- 21 Q. Well it was --
- 22 A. It was my entry position.
- 23 Q. Correct, correct. That's what I meant.
- 24 A. Uh-huh.
- 25 Q. Tell me about that job. What duties did you

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1 have as associate statistician?

2 A. We consulted with almost everybody that was
3 doing projects about the statistical significance of
4 their data and we asked -- we asked questions
5 pertaining to statistical matters -- or we answered
6 questions pertaining to statistical matters with
7 other people employed by the company.

8 Q. So this was -- would be a company-wide
9 function?

10 A. It was in marketing and marketing research.
11 Marketing research was where the function was. They
12 sometimes loaned us out. We asked -- we -- we
13 sometimes did consulting with the -- the foods
14 company at the time too. They would sometimes ask us
15 statistical questions.

16 Q. What kinds of projects would you consult on with
17 regard to statistical analysis in nineteen -- in 1975
18 when you started with the company?

19 A. Well they might ask us whether a certain result
20 on an advertising test was statistically significant,
21 product tests, pretty much any research that the
22 people were doing that were unsure of the statistics
23 of the -- of the -- of their study.

24 Q. And when --

25 And I guess when I referred to this being

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1 company wide, what I meant was you -- you were not
2 assigned to a specific project as a -- as an
3 associate statistician?

4 A. Some of each. I mean, I would handle
5 miscellaneous questions as well as assigned projects,
6 yes.

7 Q. And how was the marketing group organized at
8 that time? To whom did you report? And I guess I'm
9 trying to understand not so much the names of people,
10 but somewhat of an organizational structure at that
11 time, as you recall.

12 A. I believe the way the marketing research
13 department was laid out was there was a brand
14 research function. Now under the brand research
15 function, they would provide the marketing department
16 with research designed to address their questions.
17 There was a consumer research section, which I
18 believe did general consumer tracking and product
19 testing services.

20 My group was the one that included forecasting
21 and statistical support.

22 Q. Forecasting for what, sir?

23 A. The forecasting of tobacco sales is what the
24 group did, what they expected the sales to be.

25 Q. And --

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1 And that was somewhat of a permanent group
2 assignment for you?
3 A. I was not assigned to the forecasting function.
4 Q. There was another group, however, that could
5 call upon services of associate statisticians?
6 A. Any of those services could ask us for help on
7 their projects.
8 Q. Any other functions that you recall being in
9 the -- the marketing research area at that time?
10 A. Not that I recall.
11 Q. And the position of statistician was a promotion
12 for you in the company?
13 A. Yes, it was.
14 Q. And how did your job duties change in that
15 position?
16 A. They didn't change in nature. They just changed
17 in terms of -- of credibility, I should say. I was
18 more independent.
19 Q. Did you become in some way a -- a manager of
20 other statisticians at that point?
21 A. Yes.
22 Q. And would you be, as a more senior statistician,
23 someone who would be in charge of a project with
24 other statisticians working sort of for you in that
25 project, if you will?

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1 A. Yes.

2 Q. Generally though, you -- you worked in the same
3 areas of brand research, consumer research and
4 forecasting?

5 A. We would answer questions for them, yes.

6 Q. Were there any other areas that -- that became
7 part of your job responsibility other than those
8 three we've talked about when you were a
9 statistician?

10 A. Not that I recall.

11 Q. Then you went to the manager of qualitative
12 methods.

13 A. Quantitative methods.

14 Q. I'm sorry, quantitative methods. What was your
15 job function in that position?

16 A. Well, the main function, I think, was to --
17 was -- was to try to develop marketing models that
18 could help us better understand the market, I -- I
19 guess loosely speaking.

20 Q. How did you go about developing those marketing
21 models?

22 A. Primarily I worked with other people who had
23 built models and tried to adapt those models to our
24 business.

25 Q. When you say "other people," you mean outside of

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- 1 R.J. Reynolds?
- 2 A. That's right.
- 3 Q. In what kinds of businesses do you recall
- 4 looking for marketing models as something to be
- 5 potentially utilized inside RJR?
- 6 A. Well I was asked to work on a specific model
- 7 rather than search out models.
- 8 Q. And what was that?
- 9 A. The model that I worked with was called the
- 10 Hendry model. It was provided by a company called
- 11 the Hendry Corporation.
- 12 Q. Is that H-e-n-d-r-y?
- 13 A. That's right.
- 14 Q. And what did the Hendry Corporation
- 15 manufacture?
- 16 A. They sold their model to different industries.
- 17 Q. Were they in the business of developing
- 18 marketing models?
- 19 A. They had a particular model which they sold.
- 20 Q. Did they utilize it in some business of their
- 21 own, the Hendry Company's?
- 22 A. I don't know.
- 23 Q. Is there a particular statistical framework that
- 24 that model was based upon?
- 25 A. No, I would not say it was a statistical model.

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1 Q. What was unique about the Hendry model that made
2 it something that R.J. Reynolds thought might be
3 utilized for their business?

4 A. One unique thing was it was built from switching
5 dynamics of the marketplace so that it relied
6 primarily on consumer behavior.

7 Q. And did you ultimately utilize the -- the Hendry
8 Company's model?

9 A. No, we did not.

10 Q. And why was it that you determined that wasn't
11 usable for R.J. Reynolds?

12 A. We felt that it could not -- it did not
13 correctly predict or account for trends that were
14 happening in our business. Basically our sales did
15 not validate against the predictions they made.

16 Q. So if I understand the process in -- in terms
17 of -- of attempting to utilize this, you would take
18 the model; you would -- you would do some modeling
19 for a particular brand or a particular part of R.J.
20 Reynolds' business and then look at the results to
21 see how closely the -- the -- the model had predicted
22 the actual outcome?

23 A. That's correct.

24 Q. And in doing that over some test period of time,
25 you determined that the Hendry model simply didn't

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1 hold up to actual results?

2 A. That was the case, yes.

3 Q. Did you --

4 Do you know what other companies, if any, used
5 the Hendry model?

6 A. I have heard names of people. I don't --

7 I've -- I've --

8 Q. What have you heard?

9 A. I have heard that it was used by General Foods
10 at one time, Armor Dial Corporation. Those are the
11 two that spring to mind. I'm sure there must be
12 more. I don't know what they are.

13 Q. When the decision was made not to use the Hendry
14 model on a regular basis, was there another model
15 that you were then asked to look at as a possible
16 choice?

17 A. I don't recall.

18 Q. Do you recall ever looking at other models
19 outside of RJR to potentially be utilized for RJR
20 development of marketing models?

21 A. I don't recall.

22 Q. Are you saying there may have been some and you
23 don't recall?

24 A. That's correct.

25 Q. What else did you do in the position of manager

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1 of quantitative methods?

2 A. I continued to provide some of the services of a
3 statistician and continued to consult on projects.

4 Q. Again with the brand research, the consumer
5 research and the forecasting areas of the company?

6 A. Yes.

7 Q. Any other areas of the company added to your
8 responsibilities at that time?

9 A. I believe for a short period of time I oversaw
10 the running of a National Family Opinion panel.

11 Q. Which National Family Opinion panel?

12 A. Let me explain to you what that is. RJR for
13 many years would -- hired this company called Fam --
14 National Family Opinion, which was a company that was
15 in the business of recruiting consumers from many
16 industries; it's not just ours. So they maintained a
17 very large panel of people who were willing to
18 participate in product testing services and the likes
19 of that.

20 RJR used that panel in order to find cigarette
21 smokers in order to test their products, and we
22 screened that panel every six months to make sure
23 that the brand list was current, and -- and I
24 analyzed some of the switching data that occurred
25 from that. It more or less grew out of the Hendry

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1 model itself.

2 Q. Well how do you mean that it grew out of the
3 Hendry model?

4 A. Well the Hendry model was built off switching
5 behavior, so I got closely involved with the
6 switching data that we had on the company about how
7 many people switch every six months, what do they
8 switch to, what do they switch from and what the
9 patterns were. Having be -- been involved in using
10 that information for this particular model, I believe
11 I was also the main manager in terms of overseeing
12 its conduct on an ongoing basis.

13 Q. And how long did you oversee the NFO?

14 A. I don't think it was very long. Perhaps a
15 year.

16 Q. All within the period of time when you were the
17 manager of quantitative methods or did it --

18 A. I believe so.

19 Q. Any other job duties that you can recall that
20 you had as manager of quantitative methods?

21 A. Not that I recall.

22 Q. Then the position of group manager of strategic
23 research, that was also a promotion?

24 A. I -- I think I might have been a manager of
25 strategic research before that, in which case it

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1 wasn't a promotion.

2 Q. That would have been a lateral move?

3 A. It was a lateral shift, I think, originally.

4 Q. Okay. What --

5 Tell me about the different function between the
6 strategic research group and the quantitative methods
7 group.

8 A. Well, let me try to explain to you how the
9 strategic research group was set up, because it is a
10 rather unusual group. The way things were set up at
11 Reynolds is that different individuals in marketing
12 research were responsible for very specialized
13 activities. So there were people that would help --
14 each brand would be a person assigned to it. People
15 would be assigned to promotion research or
16 advertising research, various product research, very
17 specialized tasks.

18 The concept of strategic research would be to
19 have a person that was assigned full time to
20 integrating all the different pieces of information
21 and to simply try to understand the market as a whole
22 as opposed to a specific title, and that loose
23 sense -- that loose accountability then fell to the
24 strategic research group.

25 Q. Let me see if I can get a -- somewhat of a -- a

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1 compendium of those functions. You mentioned a few.

2 A. Okay.

3 Q. Why don't we go back through, and tell me what
4 were the various functions that had specific duties
5 that were attempted by the strategic research group
6 to be gathered together in a meaningful way. You
7 list those that you recall. You mentioned some. If
8 you would mention them again and just give me the --
9 the most complete list you can recall.

10 A. There would be product testing information that
11 we may look at. There could be advertising. We
12 would look at information from sales trends of
13 different brands and different brand styles. You
14 know, we would be aware generally of what brand --
15 individual brands had learned about their brands.

16 We were more or less charged to be aware of
17 many, many different things and trying to find
18 connections from one area to the other as one of the
19 functions to integrate that which is learned by
20 others, if you will.

21 Q. And what kinds of -- of individual brand
22 positions or titles, what kind of people in the
23 individual brand areas would you interact with to
24 gather that information?

25 A. We might read reports that they sent. I don't

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1 know that we interacted on a ongoing basis. I don't
2 think that that was part of the ongoing work.

3 Q. So the individual brand information came
4 primarily from written reports?

5 A. I believe so, yes.

6 Q. And would those reports with regard to -- to
7 individual brands also address things such as sales
8 trends?

9 A. They could.

10 Q. Or advertising campaigns?

11 A. They could.

12 Q. Or product testing results?

13 A. Yes.

14 Q. Any other kinds of reports that would be unique
15 on a brand-by-brand basis that you recall seeing in
16 your position of director of strategic marketing?

17 A. I don't recall any -- any particular thing.

18 Q. How many people worked for you as director of
19 strategic marketing?

20 A. Initially nobody.

21 Q. You --

22 You were the head and all of the department?

23 A. More or less, more or less.

24 Q. So that was a newly created position when you --

25 A. It was a newly created position.

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1 Q. Did --

2 Over time did -- did others join you in that
3 department?

4 A. Yes.

5 Q. And as I understand it, that was a five- to
6 six-year period. When you left that position in the
7 strategic research area, how many people were
8 reporting to you?

9 A. In many respects, I really didn't leave that
10 broad function the whole time. There were title
11 changes and things, but what I actually did do as a
12 job did not change markedly from that point really.

13 Q. Until 1991?

14 A. Until I left really, even though the titles
15 changed.

16 Q. So during that period of time it grew from it
17 being just you to how many people in the -- in that
18 area? And in order to not get hung up on your title,
19 how can we identify that area by a name that would
20 cover the period of time from '83 to '91, the area in
21 which you primarily directed your activities?

22 A. It was almost always known as strategic
23 research.

24 Q. Okay. So if I refer to the strategic research
25 department, that -- that will be, in your mind and

- 1 mine, the period from 1983 until 1991?
- 2 A. That will be right, although it's not -- it's
- 3 hardly a department.
- 4 Q. Area?
- 5 A. An area would be closer to the truth.
- 6 Q. Okay. How many people in 1991 when you went on
- 7 the inactive payroll status were in the strategic
- 8 research area?
- 9 A. I think -- as I said, I think it was one or
- 10 two.
- 11 Q. Had it been larger anytime between '83 and '91
- 12 than one or two?
- 13 A. The biggest it was, perhaps four.
- 14 Q. And what kind of positions did those individuals
- 15 hold?
- 16 A. They -- their titles would either be assistant
- 17 brand research manager, brand research manager. They
- 18 would carry titles from other groups because it
- 19 was -- they would rotate through my group rather than
- 20 be permanently assigned there.
- 21 Q. And to whom did you report in the strategic
- 22 research area?
- 23 A. Different people at different times.
- 24 Q. Always to the same job title, though?
- 25 A. Pretty much, yes.

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1 Q. And what would that have been?

2 A. For the most of the time period, it was group
3 manager of strategic research.

4 Q. Who was the group manager of strategic research
5 when you left the company in 1991?

6 A. There was no such person.

7 Q. Who did you report to at that time?

8 A. Who did I report to at that time?

9 Q. Yeah.

10 MS. BIXENSTINE: Objection, asked and
11 answered.

12 MR. FINZEN: Go ahead.

13 A. I -- why don't you repeat the question. Maybe
14 I've --

15 Q. Sure.

16 A. -- I've misheard.

17 Q. You said that you reported during the period of
18 time that you were in the strategic research area to
19 the -- someone occupying the position of group
20 manager of strategic research; correct?

21 A. Come -- come again. I'm -- I'm confused.

22 Q. I'm asking during 1991 when you left the
23 company --

24 A. Okay.

25 Q. -- you were still in the strategic research

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1 area.

2 A. My title wasn't called that anymore, but my
3 function was -- my function was similar. I wouldn't
4 say the same; similar.

5 Q. And you still reported to the position of group
6 manager of strategic research?

7 A. I never --

8 MS. BIXENSTINE: Objection.

9 A. I did not report ever to the group manager of
10 strategic research.

11 Q. Okay.

12 A. I was that person at one time.

13 Q. Okay. During the period of time when you were
14 in the area of strategic research -- let's start with
15 that, when you were group manager of strategic
16 research.

17 A. Okay. We're starting at the beginning now.

18 Q. Yeah.

19 A. Okay.

20 Q. To whom did you report then?

21 A. The very first person I reported to was a man
22 named Greg Novak.

23 Q. And what position did he hold?

24 A. I don't recall his title.

25 Q. And did you report to anyone else while you were

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1 group manager of strategic research other than
2 Mr. Novak?
3 A. Yes.
4 Q. Who would that have been?
5 A. A man named Ernie Fackelman I reported to.
6 Q. Do you know what Mr. Fackelman's title was?
7 A. At the time I -- I believe he was director of
8 brand research or --
9 Q. Okay.
10 A. That's a little -- I'm a little speculative. I
11 don't recall specifically.
12 Q. Anyone else you recall reporting to when you
13 were group manager?
14 A. No.
15 Q. When you moved to the position of director of
16 strategic marketing, to whom did you report?
17 A. Larry Hall.
18 Q. And what title did Mr. Hall have?
19 A. I believe it was vice president of strategic
20 planning.
21 Q. And was there anyone else you reported to other
22 than Mr. Hall during that period?
23 A. I reported to Lynn Beasley right at the very
24 end.
25 Q. Okay. Same position --

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1 MS. BIXENSTINE: Objection, asked and
2 answered.

3 Q. -- that Lynn Beasley occupied?

4 A. Pardon again?

5 Q. As Mr. Hall. Did Lynn Beasley occupy the same
6 title or position?

7 MR. TAYLOR: As Mr. Hall?

8 MR. FINZEN: As Mr. Hall.

9 A. For a time, yes.

10 Q. Anyone else that you can recall reporting to as
11 director of strategic marketing?

12 A. No.

13 Q. And the strategic research function director was
14 again within the strategic research area, same
15 general job functions?

16 A. Similar work, yes.

17 Q. And in that position you reported also to Lynn
18 Beasley; is that correct?

19 A. Later on I did. Initially I reported to Larry
20 Hall. Later on I reported to Lynn.

21 Q. Okay. And it was, if I understand correctly,
22 during that period of time from 1983 to 1991 there
23 were from zero to perhaps as many as four people who
24 reported to you.

25 A. Yes.

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1 Q. During that period, did you continue to work in
2 coordinating with brand research functions, consumer
3 research functions, forecasting functions within the
4 company?

5 A. During the time I was strategic -- in strategic
6 research?

7 Q. Yes.

8 A. To a limited degree, yes.

9 Q. Were there any other areas of the company that
10 you can recall working with on a periodic basis while
11 you were in the strategic research area?

12 A. Not that I recall.

13 Q. Now in 1991 you were approached about this
14 inactive payroll status.

15 A. Yes.

16 Q. And you --

17 You decided to go on inactive payroll; correct?

18 MS. BIXENSTINE: Objection, asked and
19 answered.

20 A. I -- I was told that this is what the deal would
21 be, yes.

22 Q. Right. Well --

23 A. I made no decision.

24 Q. All right. That's what I'm -- that's what I'm
25 trying to get at.

1 Was it your decision to leave the company on
2 inactive payroll status in 1991?

3 A. No.

4 Q. Were you asked to leave the company in 1991?

5 A. Yes.

6 Q. Did you understand that you were being
7 terminated from your position?

8 A. Yes.

9 Q. Were you given a reason why you were being
10 terminated?

11 A. The job that I occupied no longer existed.
12 They'd done away with my job.

13 Q. And based upon the discussion we've had here
14 this morning, what did you understand the specific
15 job position was that was being eliminated at RJR?

16 A. The specific job was the -- the title or the job
17 function of -- of -- of director of new business
18 development.

19 Q. Did they continue in 1991 at that time to have a
20 strategic research area within the company?

21 A. No, they didn't.

22 Q. Was that eliminated prior to 1991?

23 A. Yes.

24 Q. When --

25 When was that eliminated?

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- 1 A. My estimate is 1990, but I'm not sure.
- 2 Q. What became of the job functions that were
- 3 conducted by you in the strategic research area in --
- 4 A. I don't know.
- 5 Q. -- 1990?
- 6 A. I have not paid any attention since that time.
- 7 Q. How did you come to learn in 1990 that the
- 8 strategic research area functions were -- were being
- 9 disbanded at R.J. Reynolds?
- 10 A. Mr. Fackelman told me.
- 11 Q. And what did he tell you at that time?
- 12 A. He told me that -- that -- that there was an
- 13 opportunity to become the new business manager but
- 14 that that job might go away too, so I took it knowing
- 15 full well that it -- the company may decide to
- 16 eliminate that job as well.
- 17 Q. And why did he tell you the strategic research
- 18 area was being eliminated?
- 19 A. It was because the -- the company was looking at
- 20 use of its manpower and decided this did not -- well
- 21 that they no longer needed the function.
- 22 Q. Did Mr. Fackelman tell you how the function of
- 23 strategy -- of the strategic research area would be
- 24 handled in the future?
- 25 A. No.

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1 Q. Did you inquire whether the company was still in
2 need of strategic research at that time?

3 A. No. I didn't inquire of it, no.

4 Q. In your judgment, based upon the work that you'd
5 been doing for some seven or eight years in the
6 strategic research area, did you believe that the
7 company still had need for the function of the
8 strategic research personnel?

9 MS. BIXENSTINE: Objection, calls for
10 speculation.

11 A. I felt that we did very good work, yes, and I
12 thought that it was worthwhile.

13 Q. Was there any change that you had observed
14 within the company that would have made the work that
15 you were doing unnecessary?

16 MS. BIXENSTINE: Objection.

17 A. I think there was a very -- there was a shift
18 in -- in -- well there was -- there was different
19 people in charge of the company. Jim Schroer had
20 become, I think, the head of marketing at the time,
21 and his ideas of strategy no longer fit the ideas
22 that we had been dealing with. I believe that would
23 be the case, and it is speculation.

24 Q. In your judgment, based upon the work that you
25 were doing, did you feel that that was work that was

1 of value to R.J. Reynolds Tobacco Company?

2 MS. BIXENSTINE: Objection, asked and
3 answered, calls for speculation.

4 A. Yes. In a very general sense, yes.

5 Q. And in terms of the -- your observations of the
6 way in which the company operated in 1990, 1991, did
7 you see a change that made your job function no
8 longer, in your judgment, necessary for the company?

9 MS. BIXENSTINE: Objection.

10 A. Yes.

11 Q. And what was that observation?

12 A. They were going to put a lot more emphasis on
13 regional marketing; that is, tailoring special
14 efforts to particular regions as opposed to more
15 general marketing concepts.

16 Q. And the work that was being done in the
17 strategic research area was more broad-based, company
18 wide, than regional in emphasis?

19 A. Yes.

20 Q. Are you aware of whether any of the individuals
21 that had worked with you in the strategic research
22 area continued on doing strategic research for R.J.
23 Reynolds?

24 A. I do not believe they did, no.

25 Q. Now the inactive payroll agreement that you

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1 entered into with R.J. Reynolds, did that provide for
2 your full pay that you had been receiving at the time
3 you went on inactive payroll to continue?
4 A. For a period of time, yes.
5 Q. And was that including full benefits?
6 A. Yes.
7 Q. Were there any additional compensation or
8 benefits that were provided in the inactive payroll
9 agreement that had not been part of your regular
10 payroll or benefit plan?
11 A. No. I believe it was a straight extension.
12 Q. And the period of time, as you recall, was six
13 months?
14 A. Six, nine months, something in that
15 neighborhood.
16 Q. Was there a provision in the agreement for the
17 extension of that beyond six or nine months?
18 A. No.
19 Q. Were you offered any other position in the
20 company as an alternative to the inactive payroll
21 status?
22 A. I don't believe so.
23 Q. At the end of the period of inactive payroll,
24 when that came to a conclusion, did you have any
25 other continuing financial relationships with R.J.

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1 Reynolds?

2 A. No.

3 Q. Did you have any continuing benefit package of
4 any kind with R.J. Reynolds?

5 A. No.

6 Q. Have you been called upon since 1991 to serve in
7 the capacity as a consultant to R.J. Reynolds?

8 A. No.

9 Q. Have you been called upon since 1991 to serve in
10 any capacity as an advisor to R.J. Reynolds?

11 A. No.

12 Q. Have you entered into any other written
13 agreements with R.J. Reynolds since 1991?

14 A. No.

15 Q. Have you entered into any oral agreements with
16 R.J. Reynolds since 1991?

17 A. No.

18 Q. Have you entered into any oral or written
19 agreements since 1991 with anyone representing to be
20 attorneys for R.J. Reynolds?

21 A. Could you be more specific? I'm not sure what
22 you mean.

23 Q. Have you been approached by anyone representing
24 to be an attorney for R.J. Reynolds for the purpose
25 of entering into some sort of an agreement, either in

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- 1 writing or orally?
- 2 A. Yes.
- 3 Q. And how many times?
- 4 A. Once.
- 5 Q. When was that?
- 6 A. About a year ago.
- 7 Q. Who approached you?
- 8 A. I approached the company.
- 9 Q. You approached the company. To -- who did you
- 10 speak with?
- 11 A. Guy Blynn.
- 12 Q. Blynn?
- 13 A. Blynn. I don't know --
- 14 Q. Spell --
- 15 A. I think it's -- I don't know how to spell the
- 16 name. I just know the name.
- 17 Q. And what is Guy Blynn's position with the
- 18 company?
- 19 A. He's a lawyer.
- 20 Q. To your knowledge, does he work for R.J.
- 21 Reynolds in-house?
- 22 A. Yes.
- 23 Q. And what did you approach Mr. Blynn about?
- 24 A. I had advised him that I was being deposed.
- 25 Q. And where were you being deposed at that time?

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- 1 A. I believe it was the State of Florida, I
2 believe. I'm not sure.
- 3 Q. And what was your reason for approaching
4 Mr. Blynn at that time?
- 5 A. I thought he should know about it.
- 6 Q. Is he someone you knew when you were at the
7 company?
- 8 A. Not personally, no.
- 9 Q. Did someone refer you to him?
- 10 A. Yes.
- 11 Q. Who was that?
- 12 A. A friend of mine named Jerry Moore.
- 13 Q. And how did Mr. Moore know Mr. Blynn?
- 14 A. He works there, works for RJR.
- 15 Q. He's an employee?
- 16 A. He is.
- 17 Q. In the legal department?
- 18 A. No.
- 19 Q. So when you approached Mr. Blynn, what did you
20 ask Mr. Blynn to do, if anything?
- 21 A. I advised him that I was being deposed.
- 22 Q. And what was the purpose for your approaching
23 Mr. Blynn to tell him that?
- 24 A. I just out of consideration to the company.
- 25 Q. Did you then enter into some sort of an

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1 agreement with R.J. Reynolds with regard to that
2 deposition?

3 A. Yes.

4 Q. And what did that agreement provide for?

5 A. It agreed to pay for whatever legal expenses I
6 would have.

7 Q. Can you be more specific in terms of what the
8 agreement said about that.

9 A. It was not a formal agreement; it was a verbal
10 agreement.

11 Q. Okay. And did you ask Mr. Blynn whether R.J.
12 Reynolds would pay any expenses incurred --

13 A. No.

14 Q. -- with the deposition?

15 A. I did not ask.

16 Q. Did Mr. Blynn offer to pay for expenses incurred
17 in the deposition?

18 A. He did.

19 Q. And what expenses, if any, did Mr. Blynn agree
20 to pay?

21 A. My legal fees.

22 Q. And what did --

23 What did that involve, to your understanding?

24 A. The fees charged by my lawyer.

25 Q. Okay. What about any expenses that were not

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- 1 legal fees? Were those addressed?
- 2 A. No.
- 3 Q. Did you submit a bill of any kind to Mr. Blynn?
- 4 A. I did not, no.
- 5 Q. Do you know whether your attorney submitted any
- 6 bill to Mr. Blynn?
- 7 A. I don't know.
- 8 Q. Did you in fact have an attorney that you hired
- 9 at that time to represent you with regard to the
- 10 State of Florida depo?
- 11 A. Before -- before that offer was made or what --
- 12 Q. Before that offer was made.
- 13 A. No, I did not.
- 14 Q. And did you hire an attorney then following the
- 15 offer from Mr. Blynn to pay for the attorney?
- 16 A. Yes.
- 17 Q. And whom did you hire?
- 18 A. I hired Dan Taylor.
- 19 Q. And did you know Mr. Taylor before that time?
- 20 A. No.
- 21 Q. Did Mr. Blynn refer you to Mr. Taylor?
- 22 A. I believe a different lawyer referred me to him,
- 23 not Mr. Blynn.
- 24 Q. Okay. Who was the lawyer who referred you to
- 25 Mr. Taylor?

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- 1 A. I don't recall the name.
- 2 Q. Was it another lawyer at R.J. Reynolds?
- 3 A. Yes.
- 4 Q. And how did you happen to see this other lawyer
- 5 after meeting with Mr. Blynn?
- 6 A. It was a telephone call.
- 7 Q. Was that telephone call following your meeting
- 8 with Mr. Blynn?
- 9 A. Yes.
- 10 Q. And was the purpose of the telephone call to
- 11 give you the name of a lawyer to whom you could -- or
- 12 with whom you could consult for the deposition?
- 13 A. I don't recall the purpose of the telephone
- 14 call.
- 15 Q. But you do recall that during that telephone
- 16 call this other lawyer, whose name you do not
- 17 recall -- is that correct?
- 18 A. I'm not sure. That's -- that's --
- 19 Q. Do you think you might know who it is? You
- 20 just --
- 21 A. I think I might know who it is, but I'm not
- 22 sure, so I --
- 23 Q. Well who do you believe that it is?
- 24 A. It's guessing.
- 25 Q. Well give me your best guess then.

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1 MR. TAYLOR: If you have a belief,
2 obviously answer the question. I don't want you to
3 guess or speculate. He's entitled to a fair answer
4 if you have a, you know, belief to it.

5 A. I -- it doesn't come to me right now. I don't
6 know.

7 Q. Do you recall the names of any other attorneys
8 in-house at R.J. Reynolds with whom you have spoken
9 since 1991 other than Guy Blynn?

10 A. Yes.

11 Q. Give me the names of any you can recall speaking
12 with.

13 A. I can -- I can recall speaking with Kim.

14 Q. "Him" being Mr. Taylor?

15 A. No, Kim.

16 Q. Oh, Kim. I'm sorry, I thought you said "him."

17 Okay. Anyone else?

18 A. I don't -- I don't recall other names.

19 MS. BIXENSTINE: For the record, I'm
20 outside counsel, not inside counsel, for Reynolds.

21 MR. TAYLOR: At some point I need to deal
22 with lunch, so whatever, in terms of getting it to
23 the right place so that we eat it -- get it in a
24 timely manner, so when you finish a subject area.

25 MR. FINZEN: Okay.

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1 BY MR. FINZEN:

2 Q. So if I understand, after seeing Mr. Blynn,
3 another lawyer in-house at R.J. Reynolds --

4 A. I don't know if it was in-house either. I'm --

5 Q. Okay. Another lawyer who represented to you
6 that he or she was with R.J. Reynolds recommended
7 that you see Mr. Taylor?

8 A. That's correct.

9 Q. And was it a he or she; do you recall that?

10 A. It was a he.

11 Q. And in the course of those discussions, was
12 there any discussion about compensation to you for
13 your time in being prepared for and in taking the
14 deposition in that case?

15 A. No.

16 Q. Did that deposition actually go forward?

17 A. No.

18 Q. Have you been deposed or had a request for a
19 deposition made upon you since that time other than
20 for the deposition today?

21 A. Will you state it again.

22 Q. Sure. Since the time that you talked to
23 Mr. Blynn and went to Mr. Taylor for the Florida
24 deposition, have you been either noticed or requested
25 to appear at another deposition with regard to your

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1 employment at R.J. Reynolds other than the one
2 today?

3 A. No, I have not.

4 Q. And prior to going to Mr. Taylor in connection
5 with the R.J. Reynolds contact through Mr. Blynn, had
6 you had any dealings with Mr. Taylor prior to that
7 time?

8 A. No, I did not.

9 Q. Have you had any dealings with Mr. Taylor
10 outside of your RJR dealings that you've talked --
11 testified to here today since that time?

12 A. No.

13 Q. When the notice and subpoena for the deposition
14 today came to your attention, what did you do by way
15 of contacting R.J. Reynolds, if anything?

16 A. I contacted my lawyer. I'm sorry, my lawyer
17 contacted me actually and advised me that this was --
18 that I was being deposed.

19 Q. And --

20 And when you say "my lawyer," who contacted
21 you?

22 A. Dan contacted me to tell me that Minnesota
23 was -- was deposing me.

24 Q. Okay. That's the first you heard of it, coming
25 through Dan Taylor?

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1 A. That's right.

2 Q. And with regard to any of the events surrounding
3 the Florida deposition that you were potentially
4 going to give --

5 A. Uh-huh.

6 Q. -- previously, did you pay any expenses from
7 your own pocket relating to Mr. Taylor representing
8 you?

9 A. No, I did not.

10 Q. Did you receive any money of any kind directly
11 from R.J. Reynolds with regard to that Florida
12 deposition?

13 A. No.

14 Q. Did you receive any bills for services directly
15 from Mr. Taylor for work that he did regarding the
16 Florida deposition?

17 A. No.

18 Q. Have you ever received a bill up to today from
19 Mr. Taylor for --

20 A. No.

21 Q. -- any work that he's done for you?

22 A. No, I have not.

23 MR. FINZEN: This would be a good time to
24 take a break.

25 THE REPORTER: Off the record, please.

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1 (Recess taken.)

2 BY MR. FINZEN:

3 Q. Mr. Nordine, who is your lawyer representing you
4 here today?

5 A. Dan Taylor.

6 Q. And are you in the same type of relationship
7 with RJR with regard to his pay for representing you
8 here today that you previously testified to?

9 A. Could you restate, please.

10 Q. Sure. Has RJR agreed, as they had in the past,
11 to pay Mr. Taylor for his representation of you here
12 today?

13 A. I believe so, yes. I'm not sure.

14 Q. Have you entered into any kind of a -- an
15 agreement in writing with RJR with regard to the
16 payment of Mr. Taylor here today?

17 A. No.

18 Q. Have you entered into an oral agreement of any
19 kind with RJR for the payment of Mr. Taylor for his
20 representation of you with respect to these
21 proceedings?

22 A. At the time that I talked with RJR, they -- they
23 said they would take care of it, and I have not had
24 any other talk of such a subject except for that
25 initial conversation.

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1 Q. And to your understanding then, that
2 conversation applies to the representation and
3 payment of Mr. Taylor for that representation in this
4 proceeding here today?

5 A. That is my understanding.

6 Q. With regard to this specific proceeding, have
7 you entered into any kind of a written retainer
8 agreement with Mr. Taylor?

9 A. No, I have not.

10 Q. Are you aware of whether Mr. Taylor has entered
11 into any kind of a written agreement with regard to
12 this particular proceeding for -- with RJR?

13 A. Not that I'm aware of, no.

14 Q. Are you aware whether Mr. Taylor has entered
15 into any kind of a written agreement with RJR that is
16 general in nature by which there is an agreement for
17 his representation to be paid -- of you to be paid by
18 RJR?

19 A. I'm not aware of it, no.

20 Q. You've not seen such an agreement?

21 A. No, I have not.

22 Q. Other than Mr. Taylor, have any other lawyers,
23 to your knowledge, been employed by RJR to represent
24 you in any way before today?

25 A. Not that I'm aware of, no. It was made clear to

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1 me, however, that I could choose whoever I wished. I
2 had just -- I just did not know anybody else besides
3 Dan and feel comfortable with him.

4 Q. But the referral to Dan came from RJR; is that
5 correct?

6 A. That's correct.

7 Q. And just so that the record is clear, I want to
8 make sure I -- I can't recall if I've asked you this
9 this broadly, but you've testified, let's put it this
10 way, this morning to all written agreements that you
11 have between you and R.J. Reynolds?

12 A. Pardon again, could you --

13 Q. Sure. Have you testified this morning with
14 respect to the details or terms of any written
15 agreements that you have with R.J. Reynolds?

16 A. The only written agreement I have with RJR is
17 the notice of separation and the continuance of pay
18 for six or nine months; I forget which. There are no
19 other written agreements.

20 Q. Okay. That was the tenor of my question.

21 MR. TAYLOR: Bruce, in the interest of
22 accuracy, which is what I think we're all trying to
23 get here, I believe your questions really related to
24 in what I call recent years. I believe there is a
25 document in the -- in the initial stage of

1 employment -- I don't know what years, but I'm
2 talking way back in the '70s -- some sort of a
3 trade-secret document, you know, that I -- I think
4 exists and I think would fall within your definition
5 of question, but I would suggest to you that the way
6 you've asked the question, it hadn't triggered his
7 recollection of that.

8 MR. FINZEN: Okay.

9 BY MR. FINZEN:

10 Q. With that advice, does that refresh your
11 recollection, that there was some sort of a -- a
12 written agreement that you entered into with RJR --

13 A. I believe there was, yes, when I first started
14 with the company.

15 Q. And would that have been literally at the time
16 you were first employed?

17 A. That would have been then, yes.

18 Q. Were --

19 Was that agreement modified in any way over time
20 so that a new version was signed later on?

21 A. No, not that I'm aware of anyway. I recall
22 no -- no other document.

23 Q. And that agreement was not in any way modified
24 to be re-signed at the time that you went on inactive
25 payroll?

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- 1 A. No, I don't believe so.
- 2 Q. And to your understanding, are you being paid
3 for your time at the deposition here today by
4 anyone?
- 5 A. I have received a check from the State of
6 Minnesota, I believe it is.
- 7 Q. Okay. Other than that, are you being paid for
8 your time?
- 9 A. No. No.
- 10 Q. With whom did you meet to prepare for this
11 deposition today?
- 12 A. I met with Dan.
- 13 Q. And when was that?
- 14 A. Three or four -- two or three times sometime
15 over the past two, three weeks.
- 16 Q. On any of those occasions -- occasions was
17 anyone present besides Dan Taylor?
- 18 A. Yes.
- 19 Q. And who would have been present?
- 20 A. His assistant is Mark Stafford, I believe his
21 name is.
- 22 Q. And you understand that Mr. Stafford is an
23 attorney who works with or for Mr. Taylor?
- 24 A. That's correct.
- 25 Q. Anyone else present?

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- 1 A. Yes.
- 2 Q. Who else?
- 3 A. We met with members from RJR.
- 4 Q. And on how many occasions did you meet with
- 5 members of RJR?
- 6 A. Pursuant -- pursuant to this proceedings here?
- 7 Q. Yes.
- 8 A. Once.
- 9 Q. When was that?
- 10 A. Approximately two weeks ago.
- 11 Q. And who was present from RJR at that meeting?
- 12 A. I don't recall all the names. Kim was present.
- 13 Q. Who else?
- 14 A. I don't recall the names.
- 15 Q. How many others?
- 16 A. Two, maybe three. I'm not sure.
- 17 Q. Do you know whether the others were lawyers?
- 18 A. I believe that they were lawyers.
- 19 Q. Where did that meeting take place?
- 20 A. At R.J. Reynolds' main building.
- 21 Q. And how long did you meet?
- 22 A. I would estimate three hours.
- 23 Q. What subjects were discussed at that meeting?
- 24 MS. BIXENSTINE: Objection. My
- 25 conversations with Mr. Nordine relating to his

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1 employment are covered by the attorney-client
2 privilege as he's a former employee of my client,
3 Reynolds, and they're also covered by the
4 work-product doctrine.

5 MR. FINZEN: Are you instructing him not to
6 answer?

7 MS. BIXENSTINE: I will instruct him not to
8 answer as to the subject matters, yes.

9 MR. FINZEN: As to the subject matters as
10 opposed to the specific conversations?

11 MS. BIXENSTINE: You can ask him about who
12 was present and -- and generally whether we discussed
13 his employment, but as to any other specifics, I
14 would instruct him not to answer.

15 MR. FINZEN: Okay. I think I'm entitled to
16 inquire as to the subject matters, and that would be
17 the nature of the question that I've put to him now,
18 what were the subject matters that were discussed.

19 MS. BIXENSTINE: I think anything going to
20 specific subject matters that I raised with him would
21 reveal my mental impressions and my thought processes
22 and are covered by the work-product doctrine.

23 MR. FINZEN: And you will instruct him not
24 to answer?

25 MS. BIXENSTINE: Yes.

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1 BY MR. FINZEN:

2 Q. And will you follow that instruction?

3 MR. TAYLOR: I believe that would be my
4 call, and I'll have to deal with each question as it
5 comes across the plate. I don't know any other way
6 to do it.

7 MR. FINZEN: Okay. So you're, Mr. Taylor,
8 also instructing on the basis of that question that
9 he not answer?

10 MR. TAYLOR: I don't know what question is
11 pending, to be honest with you.

12 MR. FINZEN: Okay.

13 MR. TAYLOR: I'll deal with -- I understand
14 her objections. I understand my client's obligation
15 to comply with instructions within a certain
16 parameter, and understanding that, I'll kind of deal
17 with each question as you --

18 MR. FINZEN: Okay.

19 MR. TAYLOR: -- as you -- as you
20 communicate it.

21 BY MR. FINZEN:

22 Q. The question is: At the meeting, Mr. Nordine,
23 that you mentioned at RJR's main building that lasted
24 for some three hours --

25 A. Yes.

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1 Q. -- what were the subject matters that were
2 discussed at that meeting?

3 MS. BIXENSTINE: Objection, attorney-client
4 privilege, work-product protection.

5 MR. TAYLOR: You can answer the question as
6 it relates to very general subject matters and very
7 general subject matters only. If you can, so
8 answer. Can you? General, big-picture subject
9 matters.

10 THE WITNESS: Okay.

11 A. We talked about the general areas that Reynolds
12 felt you might ask me about, and they told me that I
13 should tell the truth, that I should not speculate on
14 things that I can't really recall. They did a little
15 role playing where they would attempt to put words in
16 my mouth and pretty much familiarize me with the
17 kinds of things they thought I might experience here
18 today.

19 Q. Do you recall any specific subject matters that
20 were related to your former job duties at RJR that
21 were the subject of that discussion?

22 MR. TAYLOR: This calls for a "yes" or
23 "no."

24 A. Please re -- please rephrase it in that case.

25 Q. Sure. Do you recall any specific subject

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1 matters that were related to your former job duties
2 at RJR that were the subject of that discussion?

3 MS. BIXENSTINE: Objection to the form of
4 the question. It's vague.

5 A. Yes, I do recall.

6 Q. And what were those subject matters that were
7 discussed?

8 MS. BIXENSTINE: Objection to anything more
9 specific as being protected by attorney-client
10 privilege and work-product protection.

11 THE WITNESS: I am awaiting my --

12 MR. TAYLOR: Yeah.

13 THE WITNESS: -- attorney's comments.

14 MR. TAYLOR: Again if you can answer that
15 question in the generalest of fashion, you may do
16 so. I instruct you not to answer it with any
17 specificity, if that makes sense to you. If it
18 doesn't, I'll be more specific.

19 A. They -- I'm having difficulty trying to make the
20 judgment call between what is specific and what is
21 general, and I'm having difficulty knowing what the
22 difference is between those two is the reason why I
23 am hesitating.

24 MR. TAYLOR: Well then if you're having
25 difficulty, then I'll instruct you not to answer.

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1 Q. Let me ask --

2 THE WITNESS: Okay.

3 Q. Let me ask it this way then: Without revealing
4 who said what to whom or who asked what of whom, I'm
5 asking just for what were the general subject matters
6 during the meeting that related to your former duties
7 at R.J. Reynolds.

8 A. That related to my former duties?

9 Q. Yes.

10 A. Subject matter would be young adult smoker
11 marketing programs would be one subject matter.

12 MS. BIXENSTINE: I really think that this
13 is getting into privileged areas, and I object to any
14 further line of questioning in this area on
15 attorney-client privilege grounds and work-product
16 grounds.

17 MR. TAYLOR: Okay. I'll instruct you not
18 to answer any further at this time.

19 THE WITNESS: Okay.

20 A. I've been instructed not to answer any further
21 at this time.

22 Q. And you will follow your attorney's
23 instructions?

24 A. I -- I will follow my attorney's suggestions,
25 yes.

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1 Q. In the other one or two meetings that you had,
2 were there any persons present other than
3 Mr. Taylor?

4 MR. TAYLOR: He's already said
5 Mr. Stafford.

6 MR. FINZEN: I -- I'm not clear that he was
7 present at each time, so --

8 MR. TAYLOR: Okay, I understand. I'm
9 sorry.

10 A. Mr. Stafford was not present at RJR when we met
11 there, and he was present in Dan's office most of the
12 times I've met with Dan.

13 Q. Anyone other than Mr. Taylor and Mr. Stafford in
14 those other one to two meetings that were not at
15 RJR?

16 A. Not that I recall.

17 Q. During the meeting at -- at RJR, were you shown
18 any documents?

19 THE WITNESS: Is that one I can answer,
20 Dan?

21 MR. TAYLOR: The narrow question is were
22 you shown any documents, and by that I -- I presume
23 you mean was a document placed in front of his eyes
24 as opposed to --

25 MR. FINZEN: Yes.

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1 MR. TAYLOR: Yeah, okay.

2 A. No, there were no documents presented in front
3 of my eyes.

4 Q. Have you reviewed any documents prior to your
5 deposition here today?

6 A. I have not read them, if that's what you mean.

7 I have not sat down and studied documents.

8 Q. Have any documents been placed in front of you
9 during any of these meetings for you to review?

10 A. Only in meetings with Dan.

11 Q. So in -- in no meeting with RJR representatives
12 were you shown, in the sense of having in front of
13 you to read and review, any documents?

14 A. That's correct.

15 Q. And in the meetings that you've had with
16 Mr. Taylor, were any documents given to you to take
17 with you to review outside of the meeting itself?

18 A. Not outside of the meeting, no.

19 Q. And during the meeting, there were some
20 documents that Mr. Taylor had that he gave to you
21 to -- to look at during -- during the course of the
22 meeting?

23 MR. TAYLOR: Question mark.

24 THE REPORTER: I'm sorry?

25 MR. TAYLOR: Question mark as opposed to a

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1 statement.

2 A. I looked at parts of documents that had been

3 sent to us that might -- might be discussed here.

4 Q. And when was that; do you know?

5 A. Wednesday.

6 Q. Of this --

7 Of this week or last --

8 A. Yes, this week.

9 Q. Meaning yesterday?

10 A. I'm sorry, I got -- let me see if I got the date

11 right. Yes, I mean yesterday.

12 Q. And --

13 A. Let me -- let me -- wait a minute. It wasn't

14 yesterday. It was Tuesday.

15 Q. Okay. And was this a single document or a group

16 of documents?

17 A. They were highlighted sections on individual

18 reports.

19 Q. But there were a group in the sense that there

20 was several documents?

21 A. There were more than one, yes.

22 Q. What was your understanding of the source from

23 which Mr. Taylor obtained those documents?

24 A. I believe they were sent by the State of

25 Minnesota, but I don't know.

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1 Q. That --

2 That was your understanding at the time that you
3 reviewed them?

4 MR. TAYLOR: Well you don't testify as to
5 any communications, you know, you or I had, and if
6 anything -- if your source of your potential answer
7 is a conversation that you or I -- or I had, I
8 instruct you not to answer.

9 A. Okay. I've been instructed not to answer then.

10 Q. So you have no knowledge of the source of the
11 documents that you looked at with Mr. Taylor other
12 than from Mr. Taylor?

13 A. That's -- that's right.

14 Q. And how many documents did you review?

15 THE WITNESS: Am I -- am I to answer that
16 given that it's a meeting between you and --

17 MR. TAYLOR: I think you can answer the
18 number. He's asking for a number, if -- if you can
19 recall.

20 THE WITNESS: Okay.

21 A. I think it was two or three, four. It was a
22 relatively small number.

23 Q. And you mentioned that there was highlighting on
24 the documents.

25 A. Yes.

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1 Q. Do you know who placed the highlighting on the
2 documents?

3 A. I don't know, no.

4 Q. Did you review anything other than highlighted
5 portions of those documents?

6 A. A little bit, yes.

7 Q. Are the --

8 Were they documents that you had seen before?

9 A. They were documents I do not recall seeing
10 before. I may well have. I don't know.

11 Q. Do you know whether any of the documents that
12 you were shown came from a source other than from the
13 State of Minnesota?

14 A. I don't know where they came from.

15 Q. Were there titles on these documents, the
16 documents titled with a name?

17 A. I did not notice. I -- I assume they did. I
18 did not notice the name of the document.

19 Q. And what were the subject matters that these
20 documents dealt with?

21 A. I'll give you a specific I recall. One of them
22 was a highlighted section where the highlighted
23 information was taken out of context, so it was a
24 statement all by itself that looked unusual, but
25 taken in context, it certainly wasn't.

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1 Q. What was the statement --

2 MS. BIXENSTINE: I object to this line of
3 questioning as also showing counsel's mental
4 impressions as to which documents are relevant and --
5 and go to the defense of the litigation, so I object
6 to this line of questioning as well on privilege
7 grounds.

8 MR. TAYLOR: I'm waiting for your next
9 question.

10 MR. FINZEN: The -- there was a question
11 pending in relation to his answer, which was what was
12 the statement that was taken out of context.

13 A. I can't remember the exact -- the statement.

14 Q. What was the subject matter of the document to
15 which the statement pertained?

16 MS. BIXENSTINE: Objection, privileged.
17 The selection of the document reveals the mental
18 impressions of counsel.

19 THE WITNESS: I'm confused as to how to
20 proceed.

21 MR. TAYLOR: Well I'll tell you how to
22 proceed. What was the question?

23 MR. FINZEN: The question was: "What was
24 the subject matter of the document" --

25 MR. TAYLOR: Okay.

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1 MR. FINZEN: -- "to which the statement
2 pertained?"

3 MR. TAYLOR: "To which the statement
4 pertained." I'll instruct him not to answer.

5 BY MR. FINZEN:

6 Q. What was the general subject matter being
7 covered by the document that you're referring to?

8 MS. BIXENSTINE: Objection, privileged.

9 MR. TAYLOR: Can you differentiate between
10 that question and the previous question?

11 THE WITNESS: No, I can't.

12 MR. TAYLOR: Okay. Then I instruct you not
13 to answer.

14 BY MR. FINZEN:

15 Q. Do you know whether the documents that you were
16 shown were selected by Mr. Taylor?

17 A. No, I don't know. Are you -- there was a great
18 big box that was received of documents. I don't know
19 who selected those documents.

20 Q. So the documents that Mr. Taylor put in front of
21 you you don't know were selected by Mr. Taylor; is
22 that correct?

23 A. I think the documents that he showed parts of to
24 me were selected by him or his assistant.

25 Q. Do you know who put the highlighting on the

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1 documents?

2 A. No, I don't know.

3 MR. FINZEN: At this time, Mr. Taylor, I --
4 I need to know for the record whether these are
5 documents you selected or whether they were selected
6 by RJR because I think that makes a huge difference
7 on whether or not they are privileged as work product
8 since you are his attorney and not RJR, and if they
9 were documents that were selected and highlighted by
10 RJR, I believe I'm entitled to inquire as to those
11 documents.

12 MR. TAYLOR: Sir, the documents were
13 documents that were provided to me as being documents
14 that you had designated would be used during the
15 course of this litigation. Mr. Stafford and I
16 reviewed those documents and we brought selected
17 documents to our client's attention. The
18 highlighting information was highlighting that was
19 placed on by me, sir, and/or Mr. Stafford; he may
20 have done it on one occasion.

21 MR. FINZEN: And these were not selected or
22 highlighted by RJR counsel?

23 MR. TAYLOR: That is correct, sir.

24 MR. FINZEN: All right.

25 BY MR. FINZEN:

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1 Q. Other than the two or three meetings you have
2 discussed thus far and the people whom you remember
3 attending those meetings, are there any other
4 meetings that you've had in preparation for your
5 testimony as a witness here today?

6 A. I do not believe so, no.

7 Q. Did anyone ask you to appear for this deposition
8 voluntarily, without the requirement of a subpoena?

9 A. Not for this deposition, no.

10 Q. If you had been asked to appear voluntarily,
11 would you have appeared?

12 A. I don't know. I wasn't asked.

13 Q. If you had been asked to appear voluntarily in
14 Minnesota, would you have agreed to appear?

15 A. I don't know. I wasn't asked and I don't know.

16 Q. During the course of the meetings that you have
17 described in preparation for your deposition here
18 today, did you take any notes?

19 A. No, I did not.

20 Q. Did you bring any documents with you to the
21 deposition here today?

22 A. I did not bring any today.

23 Q. Mr. Nordine, in the position that you held as
24 the group marketing research manager, you headed in
25 that position a team for strategic research within

1 that research area, strategic research area?

2 A. It would be me plus two or three individuals
3 that would work in the area.

4 Q. And do I understand that the purpose of that
5 department was to ensure that existing research was
6 integrated and merging consumer trends and RJR
7 opportunities identified?

8 MS. BIXENSTINE: Objection to the form,
9 overbroad.

10 THE WITNESS: Can I answer it?

11 MR. TAYLOR: Yes, sir, if you can.

12 A. Okay. Yes, those would be among the -- the main
13 objectives of that group.

14 Q. And was those functions taken together intended
15 to aid and assist the company's strategic planning
16 process?

17 MS. BIXENSTINE: Objection, calls for
18 speculation.

19 A. The goal was to provide an understanding of the
20 business to management so that they can then use that
21 understanding to plan their strategies.

22 Q. So it would be a function to assist the company
23 in strategic planning?

24 A. In a very general sense, yes.

25 Q. And was another goal to ensure that marketing

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1 research support was provided to the company to
2 enable brands marketing to meet their business
3 goals?

4 MS. BIXENSTINE: Objection.

5 A. I don't recall the specific wording of that
6 phraseology you used.

7 Q. Sure.

8 A. It -- it might or might not. I'm not sure.

9 Q. Sure, let me ask again then. Was --

10 Was one of the objects then to ensure that
11 marketing research support was provided to enable
12 brands marketing to meet their business goals?

13 MS. BIXENSTINE: Objection, calls for
14 speculation.

15 A. The brands -- brands provided their research to
16 meet their goals. I was not responsible for giving
17 the brands anything but a general understanding of
18 the business.

19 Q. And in that sense, it was marketing research
20 support to the brands marketing function; correct?

21 A. In a general sense, yes.

22 Q. And the goal or the object of the brands
23 marketing business group was to sell more cigarettes;
24 correct?

25 MS. BIXENSTINE: Objection, calls for

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1 speculation, lack of foundation that this witness
2 knows anything about that.

3 A. The goal of brand research, I believe, was to
4 provide marketing information needed by the brand
5 marketing group. I do not know what the specific
6 requests of marketing are on a brand group.

7 Q. And based upon your experience with the company,
8 Mr. Nordine, marketing research has many facets;
9 isn't that correct?

10 MS. BIXENSTINE: Objection, vague.

11 A. Yes.

12 Q. One of those facets of marketing research, to
13 obtain consumer attitudes towards smoking?

14 MS. BIXENSTINE: Objection. What do you
15 mean by "consumer"?

16 MR. FINZEN: If he doesn't understand the
17 question, I'm sure he'll tell me.

18 A. Could you rephrase the question for me --

19 Q. Sure.

20 A. -- because it's --

21 MR. TAYLOR: I'm concerned, the way the
22 question is asked, whether you're asking it in a
23 college-level course or whether you're asking it at
24 his specific duties and responsibilities.

25 MR. FINZEN: Okay. Folks, the rules of the

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1 deposition call for the word "objection" to be made
2 with a very brief statement of the nature of the
3 objection. I -- I want to stick to that, so I will
4 ask the question again.

5 BY MR. FINZEN:

6 Q. One of the market research facets is to obtain
7 consumer attitudes towards smoking?

8 MS. BIXENSTINE: Objection, vague.

9 MR. TAYLOR: Again, sir, I would suggest
10 that if you would ask a more narrowly tailored
11 question, it might help you get the truth of the
12 matter.

13 A. Let me say in response to the question that I
14 did studies that involved looking at con -- consumer
15 attitudes about smoking.

16 Q. And you did that while you were working in a
17 market research function at R.J. Reynolds; correct?

18 A. Yes, sir.

19 Q. So the answer then to my question as to whether
20 market research in part is aimed at obtaining
21 consumer attitudes towards smoking, that's my
22 question, the answer to that is yes; correct?

23 A. It -- I'm not trying to speak for what other
24 people in marketing research did by my answer. I'm
25 trying to say that I did see studies of --

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1 Q. Okay.

2 A. -- those attitudes and monitored them, yes.

3 Q. And --

4 A. I will not speak for other people.

5 Q. But you worked in this market area that we're
6 referring to as the strategic research area for a
7 number of years; correct?

8 A. Yes, I did.

9 Q. And there were others who worked within that
10 area that also had market research aimed at consumer
11 attitudes towards smoking; isn't that correct?

12 A. There were people that monitored attitudes about
13 smoking, yes.

14 Q. So in a broad sense, people within the strategic
15 research area, part of their functions were to obtain
16 and monitor consumer attitudes towards smoking;
17 correct?

18 MS. BIXENSTINE: Within strategic research
19 now, not marketing research?

20 MR. FINZEN: Within what we've called the
21 strategic research area from 1983 to 1991.

22 A. Yes.

23 Q. And was another function performed by you within
24 that area aimed at information -- gathering and
25 analyzing information with regard to preference for

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1 brands?

2 A. Can I back up on that last question because I
3 think I may have given you the -- the wrong
4 impression?

5 Q. Sure.

6 A. My group has done studies of attitudes about
7 smoking. I believe the company had other -- had then
8 proceeded to develop ongoing monitors of consumer
9 attitudes about smoking that I was not involved in
10 and were not in my group. And I just wanted to
11 clarify that in the sense that that was not an
12 ongoing responsibility of my -- of the strategic
13 research group. And that's the only addition I
14 wanted to make to what I just said.

15 Q. Okay. Is another one of the facets of market
16 research to look at consumer preference for brands?

17 A. Yes.

18 Q. And the --

19 That was conducted within your strategic
20 research area?

21 A. Some of it was and -- and people's preferences
22 for brands were -- were studied in many different
23 groups.

24 Q. And one of the facets of market research in your
25 strategic research area was a preference for

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1 cigarette types?

2 MS. BIXENSTINE: Objection, vague.

3 A. We analyzed information that talked about the
4 share of smokers in various groups, in total and in
5 various groups, yes.

6 Q. And is the market research that you were doing
7 in the strategic research area a component of
8 developing a marketing strategy plan?

9 MR. TAYLOR: Objection.

10 MS. BIXENSTINE: Objection.

11 MR. TAYLOR: Did you understand his
12 question?

13 A. Could you -- could you repeat it? There are
14 general questions and --

15 Q. Sure.

16 A. -- I'm having a hard time understanding what you
17 mean by them, I guess.

18 Q. The question is: Is the work that you did in
19 the strategic research area a component of what
20 became a developed marketing strategy within RJR?

21 MS. BIXENSTINE: Calls for speculation.

22 A. I guess I'd have to say I don't know. Only in
23 the general -- most general sense I think. There was
24 no specific input to those particular plans.

25 Q. To your knowledge, was the work that you did in

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1 the strategic research area used by others in
2 developing market strategies?

3 A. I think so, yes, in a general sense.

4 Q. And is it true that marketing strategies then
5 are used to develop advertising campaigns?

6 MS. BIXENSTINE: Objection, calls for
7 speculation.

8 A. Do you mind if I ask my -- ask my counsel a
9 question on this one?

10 MR. TAYLOR: If you can answer his
11 question, go ahead and answer his question. If you
12 can't, you know, you can't, but I mean I would --

13 A. It does call for speculation and I don't have
14 firsthand knowledge, sir.

15 Q. Well let me ask you this: During the time that
16 you were in the strategic research area, did you see
17 any of the work that you had personally done with
18 regard to market research on consumer attitudes or
19 preference for brands used in developing an
20 advertising campaign?

21 A. My -- my involvement in developing advertising
22 campaigns was next to nothing. I was -- I don't ever
23 recall being involved in the development of an
24 advertising plan or a thing for a brand because they
25 had people assigned to do that job, and that was not

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1 part of my responsibilities, to be involved in such a
2 process.

3 Q. But part of your responsibilities, as I
4 understand it, were to develop market research
5 analysis that you would pass on to those people in
6 the brands who had responsibility for developing
7 advertising; is that correct?

8 A. Yes, but they could either choose to use what my
9 information or my presentations would say or they
10 would choose not to. That -- they were not compelled
11 to use it, and I -- I -- like I say, I'm not involved
12 in what they actually developed in advertising, so I
13 can't speak of firsthand knowledge of what they --
14 was used.

15 Q. I understand, and what I asked earlier was:
16 During the period of some eight years you were there,
17 there were times when market research analysis that
18 you had done was used in advertising campaigns; isn't
19 that correct?

20 MS. BIXENSTINE: Objection, calls for
21 speculation, asked and answered.

22 A. I don't know.

23 Q. You don't know?

24 A. No.

25 Q. So in eight years with the company, there was

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1 never a time when you were able to identify any of
2 the work that you had done in the strategic research
3 area that formed any part of an advertising campaign
4 for a brand?

5 MS. BIXENSTINE: Objection, asked and
6 answered.

7 A. There -- hmm. I frankly have a hard time doing
8 it because the nature of the question requires me to
9 say what somebody else has done with information that
10 I provided. Now whereas I believe the information I
11 provided was useful to people, I don't have firsthand
12 knowledge of what in fact they did with it when and
13 where, so that I'm -- I'm having a very difficult
14 time answering questions about what somebody else did
15 with my information, even though I believe it was --
16 I believe it was worthwhile. I don't know that
17 everybody else shared that opinion.

18 Q. I --

19 A. And so I'm struggling with the -- the generality
20 of the question you're asking me.

21 Q. I understand and I'm --

22 MR. TAYLOR: I would suggest that the
23 question that he asked had three possible responses,
24 either a "yes," "no," or "I don't know."

25 THE WITNESS: Uh-huh.

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1 MR. TAYLOR: Just listen to his question.

2 Q. The question was intended to be more specific,
3 and that is: During the period of time, some eight
4 years, you were in the strategic research area, are
5 you aware of any time when the work that you did did
6 find its way into an advertising campaign?

7 MS. BIXENSTINE: Objection, asked and
8 answered three times.

9 A. I am not aware of a specific thing that entered
10 into a advertising campaign.

11 Q. Between 1975 when you came to the company --

12 A. Uh-huh.

13 Q. -- and 1991 when you left the company, did RJR
14 advertise or direct its advertising to persons 18
15 years old and older?

16 A. They directed it to smokers 18 years and older.

17 Q. And during that same period of time, from 1975
18 until you left the company, did RJR -- R also direct
19 its ads to appeal to smokers under the age of 18?

20 A. No, not to my knowledge.

21 Q. So it's your understanding then that RJR
22 advertisements to smokers were intended to appear --
23 to appeal to a person on their 18th birthday but not
24 the day before their 18th birthday?

25 MS. BIXENSTINE: Objection.

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1 A. Reynolds marketed to adult smokers, and that
2 includes every adult smoker. That is my
3 understanding.

4 Q. And my question is: It's your understanding
5 that that began on the person's 18th birthday and the
6 ads were not intended to appeal to a person the day
7 before their 18th birthday; is that correct?

8 MS. BIXENSTINE: Objection, argumentative.

9 MR. TAYLOR: Objection, argumentative.

10 A. I believe I answered your question.

11 Q. Well my question calls for either a "yes" or a
12 "no" answer.

13 A. Then -- then -- then please -- I'm sorry, please
14 repeat it then.

15 Q. Sure.

16 A. I'm --

17 Q. The question is: It is your understanding then
18 that R.J. advertisements were intended to appeal to a
19 person on their 18th birthday but not the day before
20 their 18th birthday?

21 MS. BIXENSTINE: Same objection.

22 MR. TAYLOR: Objection.

23 A. I don't know with the narrowness that has been
24 put. That -- that seems to me to be -- it seems to
25 me to be an unfair question, it seems to me. It

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1 seems ludicrous and it -- you know, I'm expressing
2 the attitude that -- that I don't know given the
3 question you've put -- as you've put it.

4 Q. Well then let me broaden it. Is it your
5 understanding that RJR ads were intended to appeal to
6 smokers on their 18th birthday but not the month
7 before their 18th birthday?

8 MS. BIXENSTINE: Objection, argumentative.

9 MR. TAYLOR: Same objection.

10 A. Yes, I believe. I guess I would have to say
11 yes, although the question is so narrow as it
12 seems --

13 Q. Do you think --

14 A. -- unrealistic.

15 Q. Do you think that's also a ludicrous question in
16 terms of the timing, a month before?

17 MR. TAYLOR: Bruce, I would suggest to you
18 that this man is entitled to fair questions, and --
19 and I would suggest to you that if there were people
20 that you wanted to pose these questions to, that --
21 that their job responsibilities might be a little bit
22 different than this man. This is obviously your
23 deposition, and at some appropriate time I may take
24 what I think is appropriate action. I'm not going to
25 do it now, but again I think you understand what I'm

1 saying.

2 Q. Do you -- do you understand the question?

3 A. Can I just make a statement that is not
4 necessarily a direct answer?

5 MR. TAYLOR: You can answer his question
6 any way you choose to, sir, absolutely.

7 A. Let me try to answer the questions I can and you
8 can re-ask the question if I fail to get at what you
9 want me to answer.

10 It is the case that Reynolds develops anything
11 they do to the adult smoking -- smoker marketplace,
12 18 and over. It is not and has never been my job to
13 determine who it advertises to and when it advertises
14 to. I am not a person that makes such decisions
15 anyway, so that I have -- if -- if I say whatever
16 people are going to say regarding where the
17 advertising is directed or not directed, that is not
18 my thing and it's merely speculation on what somebody
19 else might or might not have in mind. So to ask me
20 the question I think is not a very fair -- is not a
21 fair one.

22 Q. Okay.

23 A. So that if you are happy with that, okay. If
24 you're not, I'll answer the question and I'll -- ask
25 the question again and I'll --

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1 MR. TAYLOR: We'll --

2 A. -- try to do it or whatever.

3 MR. FINZEN: Move to strike as

4 nonresponsive.

5 Q. Let me ask you the question that I asked one
6 more time, and if you can answer it, fine. The
7 question I asked you was with respect to any timing
8 of the intent of advertisements by RJR to an
9 18-year-old on his or her 18th birthday but not one
10 month before, was whether you believed that that was
11 also a ludicrous question in terms of the timing of
12 the question.

13 MS. BIXENSTINE: Objection, vague.

14 MR. TAYLOR: Don't even answer that
15 question.

16 THE WITNESS: Okay.

17 MR. FINZEN: You're instructing him not to
18 answer that?

19 MR. TAYLOR: Yes, sir.

20 MR. FINZEN: On what grounds?

21 MR. TAYLOR: On the grounds that I think it
22 is an unfair and inappropriate question.

23 MR. FINZEN: Mr. Taylor, I -- I would
24 suggest that is not an appropriate instruction on
25 which to instruct someone not to answer.

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1 MR. TAYLOR: I disagree, sir. I think
2 you're harassing my client and I think an appropriate
3 judge in an appropriate forum would agree with me.

4 BY MR. FINZEN:

5 Q. What's the source of your understanding that RJR
6 directed its ads to adult smokers?

7 A. I guess most generally it is the corp -- it's
8 the policies of the corporation that we interview
9 nobody under the age of 18, we don't market to 18.
10 There's an advertising code, I believe, that I have
11 read at some time. It has always been made known to
12 me that -- that Reynolds does not do this, and that's
13 just general, but it's always been clear to me.

14 Q. You are aware of the tobacco companies'
15 voluntary advertising code?

16 A. I have read that, yes.

17 MR. FINZEN: Would you mark that, please.

18 MR. TAYLOR: It's your deposition, but I
19 would suggest before you get into confidential
20 documents, you might want to get your protection, but
21 whatever. That's okay.

22 MR. FINZEN: Has -- has this been signed
23 by --

24 MR. TAYLOR: Yes, sir, you've had copies.
25 My understanding, a copy was given to you.

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1 MR. FINZEN: Have the confidential
2 agreements been signed by Mr. Nordine?

3 MR. TAYLOR: This document, as I understand
4 it, takes care of that. We are agreeing to -- we are
5 ordered to comply in accordance with Judge Wood's
6 order from Forsyth County Superior Court.

7 MR. FINZEN: All right. My question is --
8 and this is really directed to you -- have you had
9 the witness sign the appropriate protective orders
10 under the Minnesota litigation?

11 MR. TAYLOR: We are not signing the exhibit
12 to the Minnesota protective order that submits my
13 client nor I to the jurisdiction of the Minnesota
14 court.

15 MR. FINZEN: Well has RJR satisfied itself
16 that the protective order in the Minnesota litigation
17 is adequately signed by Mr. Nordine?

18 MS. BIXENSTINE: Let's go off the record
19 for a minute.

20 THE REPORTER: Off the record, please.

21 (Recess taken.)

22 (Plaintiffs' Exhibits 1023 and 1024
23 were marked for identification.)

24 MR. FINZEN: We have marked as Plaintiffs'
25 Exhibit 1023 a protective order that has been signed

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1 by Judge William Wood, Superior Court of Forsyth
2 County in North Carolina, with Exhibits A through C,
3 and in an off-the-record discussion I think it has
4 been understood and agreed that the protections
5 necessary to show confidential documents to this
6 witness pursuant to the protective orders entered in
7 the Minnesota court are adequately covered to the
8 satisfaction of R.J. Reynolds by this protective
9 order, which is Plaintiffs' 1023.

10 MS. BIXENSTINE: That's correct.

11 MR. FINZEN: All right.

12 BY MR. FINZEN:

13 Q. Mr. Nordine, let me show you what has been
14 marked as Plaintiffs' Exhibit 1024.

15 MR. TAYLOR: Thank you, sir.

16 MR. REDGRAVE: Thank you.

17 THE WITNESS: Do I have to read this and --

18 MR. TAYLOR: Well wait until he --

19 THE WITNESS: Okay.

20 Q. And ask you to take a look at that document and
21 tell me whether you can identify it or have seen it
22 before.

23 MR. TAYLOR: I would just suggest that you
24 start at the front and look all the way through it,
25 whatever time you need to answer his question.

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1 THE WITNESS: Okay.

2 Q. Mr. Nordine, let me ask you this: Do you need
3 to pretty much see the whole document to answer my
4 question?

5 A. I would like to scan -- scan it over, I think.

6 MR. FINZEN: Why don't we go off the record
7 then and allow him to do that.

8 MR. TAYLOR: Sure.

9 THE REPORTER: Off the record, please.

10 (Discussion off the record.)

11 BY MR. FINZEN:

12 Q. Now, Mr. Nordine, while we were off the record,
13 you had a chance to review the document; correct?

14 A. Yes, sir.

15 Q. Is --

16 This is a document that's Bates stamped

17 MNAT00608606 --

18 A. Uh-huh.

19 Q. -- through 8614. Is this a document that you
20 have seen before?

21 A. Yes.

22 Q. And when we --

23 A few moments ago when you referred to knowledge
24 about there being an advertising code, is this the
25 code that you had referenced to?

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1 A. I believe so.

2 Q. And is this the code that would have pertained
3 to RJR and the advertising that it did with regard to
4 cigarettes during the period of time while you were
5 employed?

6 A. I believe so.

7 MS. BIXENSTINE: Throughout the entire
8 period of time?

9 Q. Through the period -- well through the period of
10 time that -- that you were employed at R.J. Reynolds,
11 did the advertising code apply --

12 MS. BIXENSTINE: This --

13 Q. -- to your knowledge?

14 MS. BIXENSTINE: This version?

15 A. I don't recall whether there were changes or no
16 changes or anything else. I -- this is the -- this
17 is a document that I periodically reviewed.

18 Q. Turn, if you would, to page four or at least the
19 page numbered four, which is Bates numbered
20 MNAT00608610.

21 A. Okay.

22 Q. Do you see that?

23 A. Yes, sir.

24 Q. And there is a Section 1(a) at the top of the
25 page.

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1 A. Yes.

2 Q. That says that "Cigarette" -- "Cigarette
3 advertising shall not appear," and then it lists
4 several subparts, four subparts; correct?

5 A. Yes.

6 Q. The reference in subpart marked little Roman i
7 in parentheses says "On television and radio
8 programs, or in publications, directed primarily to
9 persons under twenty-one years of age"; correct?

10 A. Uh-huh.

11 Q. And the same way with Roman numeral ii refers to
12 spot announcements in various formats, again directed
13 primarily to persons under 21 years of age. Do you
14 see that?

15 A. I do.

16 Q. Given your understanding of this ad --
17 advertising language, did you see that type of
18 language in the advertising code that you reviewed
19 periodically while you were employed at RJR?

20 A. I don't recall the specifics of this particular
21 section when I was at RJR.

22 Q. Do you recall whether the substance of Section
23 1(a), Romans little i and ii, that we've looked at
24 here this -- just now, was there in the code that you
25 reviewed while you were employed?

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1 A. The one thing I'm unsure of in my mind is
2 whether it was always 21 years of age or whether at
3 some point in time it was 18. I -- I do not know.
4 I'm not sure of the specific.

5 Q. And based upon the code, was it your
6 understanding even -- even if it said, as it says in
7 this draft, that --

8 A. Uh-huh.

9 Q. -- it was to be directed -- not to be directed
10 in programs or spot announcements directed primarily
11 to persons under the age of 21, that it was
12 permissible for RJR to direct advertising to
13 18-year-olds?

14 A. Well I was -- you know, I guess I felt this
15 thing, since I was not involved in advertising and
16 promotion and that I didn't see any particular way
17 this applied to my works, and I'm confident that for
18 the people that made decisions about advertising and
19 the placement of advertising and things, that they
20 were instructed to follow this. I didn't do that
21 myself. I was not in that area.

22 Q. So if R.J. Reynolds was not advertising to
23 anyone who was under the age of 18, would there have
24 been any reason for them to keep information with
25 regard to sales of cigarettes to kids under the age

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1 of 18?

2 MS. BIXENSTINE: Objection.

3 A. I don't know.

4 Q. Would there have been any reason for them to
5 keep information with regard to brand preference of
6 smokers under the age of 18?

7 MS. BIXENSTINE: Objection, calls for
8 speculation.

9 A. Again I don't know the reasons, whatever reasons
10 anybody is -- is deciding to do whatever they have
11 done. I --

12 Q. Well --

13 A. I don't have knowledge that I had need to do
14 that.

15 Q. Would there have been any need for RJR to keep
16 track of information with regard to the age at which
17 smokers under 18 began smoking?

18 MS. BIXENSTINE: Objection, calls for
19 speculation.

20 A. I don't know.

21 Q. Would there have been any need for R.J. Reynolds
22 to keep track of information with regard to the
23 incidence of kids under the age of 18 smoking?

24 A. It would be --

25 MS. BIXENSTINE: Objection.

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- 1 A. It would be speculation on my part.
- 2 Q. Well do you have any knowledge of any need for
- 3 RJR to have information with regard to the incidence
- 4 of kids under the age of 18 smoking?
- 5 A. Sorry, phrase -- phrase again, if you -- if you
- 6 would. I --
- 7 Q. Sure. Do you have any knowledge of any need for
- 8 RJR to have information regarding the incidence of
- 9 kids under the age of 18 smoking?
- 10 A. The only comment I would inject on that is that
- 11 publicity is put into the newspapers about that
- 12 subject matter all the time and that I guess I would
- 13 imagine the company has some need to respond to that,
- 14 but I have no firsthand knowledge of them doing so.
- 15 Q. In the market research, strategic research
- 16 area --
- 17 A. Uh-huh.
- 18 Q. -- that you worked in, did you have any need for
- 19 information with regard to the sales of cigarettes to
- 20 kids under the age of 18?
- 21 A. No.
- 22 Q. Did you have any need for information to keep
- 23 track of brand preference of kids under the age of 18
- 24 who smoked?
- 25 A. No.

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1 Q. In the strategic market research area, did you
2 have any need to have information with regard to the
3 age at which kids under the age of 18 started to
4 smoke?

5 A. No need, no.

6 Q. Did you have any need in the strategic market --
7 strategic research area to have information regarding
8 the incidence of kids under the age of 18 smoking?

9 A. No.

10 Q. While you were employed at RJR, were you aware
11 that RJR had such data within its possession?

12 A. Yes, sometimes.

13 Q. Do you know whether RJR has ever publicly
14 admitted that it kept such data?

15 A. I don't know if it has or not.

16 Q. Based upon the data regarding those subjects
17 that I've asked you about regarding information on
18 under-18-year-old smoking, brand incidence, that sort
19 of thing, based upon that information, what was it
20 used for, to your knowledge?

21 MR. TAYLOR: Objection to the form of the
22 question.

23 MR. FINZEN: Let me -- let me -- let me ask
24 a different question then.

25 Q. Did you in your job use that information in any

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1 way?

2 A. No, I did not.

3 Q. Do you know of any reason why R.J. Reynolds
4 would publicly deny that it kept such information?

5 MS. BIXENSTINE: Objection, lack of
6 foundation.

7 A. I have no knowledge of that.

8 Q. Mr. Nordine, do you know what the William Esty
9 Company is?

10 A. Yes, I've heard of the company.

11 Q. What is --

12 What is the William Esty Company, to your
13 knowledge?

14 A. It's an advertising agency, I believe in New
15 York.

16 Q. While you were at -- employed at R.J. Reynolds,
17 did you work with them in any way?

18 A. What do you mean by "work with them in any
19 way"? I gave presentations to them once or twice
20 maybe.

21 Q. Okay. When would that have been?

22 A. I -- I can't give a specific answer.

23 Q. Would it have been in the 1970s?

24 A. It could have been. I don't know.

25 Q. Could it have been in the 1980s as well?

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- 1 A. It could have been. I don't know.
- 2 Q. Could it have been as late as 1990 or 1991?
- 3 A. I don't think so, no.
- 4 Q. What was the nature of the presentations that
- 5 you gave?
- 6 A. I -- I -- I am not sure of any -- I'm not sure
- 7 that I have specific -- I'm not sure that I'd
- 8 specifically given any presentations to Esty. I
- 9 believe that I could well have, and so I -- I
- 10 don't -- I don't -- no, I don't recall the specifics
- 11 of anything. I'm just saying I could have done
- 12 that.
- 13 Q. Did you from time to time receive any
- 14 information that was produced by William Esty and
- 15 sent to R.J. Reynolds?
- 16 A. Yes.
- 17 Q. What kind of information would that be?
- 18 A. I believe they at one time processed the NFO
- 19 data, National Family Opinion data. I have no
- 20 firsthand knowledge of that, but I have heard that.
- 21 Q. And do you know how long R.J. Reynolds had a
- 22 business relationship with William Esty?
- 23 A. No, I don't.
- 24 Q. In seeing data prepared for R.J. Reynolds by
- 25 William Esty, were you aware that William Esty did a

1 study with regard to cigarette smoking among high
2 school students?

3 MS. BIXENSTINE: Objection, lack of
4 foundation.

5 A. I am not aware of -- of such a study.

6 MR. FINZEN: Would you mark this, please.

7 (Discussion off the stenographic record.)

8 (Plaintiffs' Exhibit 1025 was marked
9 for identification.)

10 BY MR. FINZEN:

11 Q. Mr. Nordine, I'm showing you what's been marked
12 as Plaintiffs' Exhibit 1025, and I would ask you to
13 tell me whether you have seen that document before.
14 And do you need some time to review it?

15 A. I will, yes.

16 MR. FINZEN: Why don't we go off the record
17 while he reviews it then.

18 THE REPORTER: Off the record, please.

19 (Discussion off the record.)

20 BY MR. FINZEN:

21 Q. Mr. Nordine, during the break you've had a
22 chance to review what has been marked as Plaintiffs'
23 Exhibit 1025; is that correct?

24 MR. TAYLOR: Yes, sir.

25 Q. Correct?

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1 MR. TAYLOR: He's asking you.

2 A. Oh, yes. Yes, that's correct.

3 Q. And that is a document that is Bates numbered
4 50111 3723 through 373 -- 30?

5 A. Uh-huh.

6 THE REPORTER: Your answer?

7 A. Yes.

8 Q. Have you ever seen this document before?

9 A. No.

10 Q. During the period of time when you were at R.J.
11 Reynolds, did you see any documents from William Esty
12 that purported to provide information with regard to
13 cigarette preference among high school students?

14 A. I do not recall seeing anything like that.

15 Q. And if you will turn to the third page of the
16 exhibit, which is Bates numbered 50111 3725, --

17 A. Yes.

18 Q. -- Table 1 at the top, --

19 A. Yes.

20 Q. -- this purports to be a table of "INCIDENCE OF
21 CIGARETTE SMOKING, 1959 VERSUS 1958"; correct?

22 A. Correct.

23 Q. Do you see that? And it purports to list
24 percent in each group who smoke and who do not smoke
25 among the -- the number of respondents listed in the

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1 middle of the page?

2 A. Yes.

3 Q. And it purports to gather that information for
4 high school students in the freshman, sophomore and
5 junior and senior classes. Do you see that?

6 A. Yes.

7 Q. During the period of time when you were employed
8 at RJR, did you see any information from William Esty
9 that gathered information with regard to incidence of
10 cigarette smoking among freshman, sophomore, junior
11 or senior high school students?

12 A. I did not see any such information from Esty.

13 Q. Did you see information purporting to track the
14 incidence of cigarette smoking among freshman,
15 sophomore, junior and seniors in high school from any
16 other source while you were employed at RJR?

17 MR. TAYLOR: Objection to the form of the
18 question.

19 A. I am unsure whether I've seen anything within
20 the company. Whether that was done or not, I do not
21 recall. I -- on the other hand, I have seen such
22 things in newspapers, for instance, and there are --
23 that's the distinction I want to make.

24 Q. Fine. And let me clear up. I'm not -- I did
25 not mean the intent of my question to ask whether you

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1 had seen it in publications outside of the company.
2 I meant in documents that were business documents
3 within R.J. Reynolds.

4 A. Uh-huh. There -- I think -- as I think I said
5 before, there was -- there was a book in National
6 Family -- Family Opinion that produced such data as
7 an artifact. It was not used by anybody, but I was
8 aware of its existence. It was not reviewed by me on
9 any frequent basis of any sort.

10 So I'm not sure if that's a "yes" or a "no" to
11 your question in the end.

12 Q. Now you previously mentioned the National Family
13 Opinion organization.

14 A. Yes.

15 Q. And sometimes did you see them referenced within
16 R.J. Reynolds as the NFO?

17 A. That -- that's what National Family Opinion --
18 that is the initials standing for National Family
19 Opinion, yes, sir.

20 Q. And if I use those in our deposition today,
21 you'll understand that that refers to the National
22 Family Opinion poll?

23 A. That -- okay, uh-huh.

24 Q. As opposed to the National Farm Organization
25 or --

1 A. Okay, I understand that.

2 Q. -- something else.

3 Now, was it your understanding that -- that R.J.
4 Reynolds had used the NFO to gather tracking data for
5 quite some time before you became employed at R.J.
6 Reynolds?

7 A. That is my understanding, that it was used some
8 time -- for some time before I got there.

9 Q. And it continued to be used while you were
10 there?

11 A. I don't know. For much of the time I was there,
12 it did. I don't know if they were continuing to use
13 it at the end or not.

14 Q. But at least for part of the time, if not all of
15 the time, you were there, it continued to be used?

16 A. Certainly for part of the time, yes.

17 Q. And I think you said your understanding was that
18 was on a semiannual basis.

19 A. It was screened every six months, yes, sir.

20 Q. Now was it also -- also your understanding that
21 that NFO tracking data tracked and kept -- kept track
22 of market share among teenagers 14 to 17 years old?

23 A. A book was produced that had such data in it,
24 yes, sir.

25 Q. That tracked brand preference among teenagers,

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1 14- to 17-year-olds, who smoked?

2 A. Yes.

3 Q. And at least the NFO reports you saw contained
4 such information?

5 MS. BIXENSTINE: Objection, vague.

6 A. The computer tabulations had that information.

7 Q. And is it your understanding that RJR did this,
8 kept track of this, through NFO to assist in
9 developing marketing and advertising strategies for
10 14- to 17-year-olds?

11 A. No, they did not. To my knowledge, they did
12 nothing like that, no.

13 Q. Now these studies were done by the NFO as a
14 result of RJR contracting with the NFO to do these
15 studies?

16 A. I believe so.

17 Q. And --

18 A. Which studies do you mean?

19 Q. These NFO studies that we've been talking about
20 here in the last few minutes.

21 A. We did not -- we did -- I do not believe we
22 contracted with them to do studies of people that are
23 under 18. I don't -- I don't mean to be saying
24 that.

25 Q. Well, your -- your understanding is, though,

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1 that RJR contracted with the NFO to gather
2 information on its behalf; isn't that right?

3 A. Yes. Can I say something regarding the NFO
4 data, if -- if I will?

5 Q. Well let me --

6 A. Because I think there's confusion entering into
7 the questions here that I would like to clear up.

8 Q. Well, do you -- do you --

9 When I say "the NFO data," is there more than
10 one set of data that you are familiar with?

11 A. It was done every six months.

12 Q. And when I say "one set," I mean was there more
13 than the every-six-month data gathering that you've
14 testified to here this morning being done by the NFO
15 for RJR?

16 A. Not on a routine basis, there was not.

17 Q. Okay. And in that routine six-month --
18 every-six-month data-gathering process, that was
19 contracted for by RJR with NFO?

20 A. I believe so.

21 Q. And RJR devised the format for the NFO
22 questionnaires that were to be used in gathering that
23 information, did they not?

24 MS. BIXENSTINE: Objection, calls for
25 speculation.

1 A. Reynolds approved it, I should say, at least
2 from the time I was there.

3 Q. And this data was gathered by -- by the NFO
4 through the use of questionnaires; correct?

5 A. Yes, sir.

6 Q. And those NFO questionnaires were designed to be
7 given to 14- to 17-year-olds?

8 A. I do not believe so.

9 MR. FINZEN: Would you -- would you mark
10 this, please.

11 (Plaintiffs' Exhibit 1026 was marked
12 for identification.)

13 BY MR. FINZEN:

14 Q. Mr. Nordine, I'm showing you what's been marked
15 as Plaintiffs' Exhibit 1026, which is identified with
16 Bates numbers 50125 4289 through 4301.

17 MS. BIXENSTINE: Thank you.

18 Q. I ask you to look at that document, sir, if you
19 will, and tell me whether you have seen it before.
20 And do you need some time to review it?

21 A. I will, yes.

22 MR. FINZEN: All right. Why don't we go
23 off the record while he reviews it.

24 THE REPORTER: Off the record, please.

25 (Discussion off the record.)

1 BY MR. FINZEN:

2 Q. Mr. Nordine, off the record you've had a chance

3 to review this document.

4 A. Yes, sir.

5 Q. Have you seen this document before?

6 A. I don't recall.

7 Q. This is dated July 9, 1980 at the top of the

8 first page, and it is directed to a Mr. Uziel or

9 Uziel Frydman. Do you see that?

10 A. Yes, sir.

11 Q. Do you know who Mr. Frydman is?

12 A. He was a -- he was a former group manager or

13 director of the company. I don't recall his exact

14 title, but he was in the marketing research

15 department.

16 Q. Would that be the same department that you were

17 in?

18 A. Yes, sir.

19 Q. Was he a supervisor of yours or someone who

20 reported to you or how --

21 A. No, he would have been a supervisor of mine.

22 Q. This document is titled with a "SUBJECT:

23 TEENAGE SMOKERS (14-17) AND NEW ADULT SMOKERS AND

24 QUITTERS." Do you see that?

25 A. Yes.

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1 Q. And in the introductory paragraph it says that
2 it's the second report tracking teenage smokers and
3 new adult quitters, first being released in the
4 spring of 1979. Do you recall when you were at the
5 company at that time that NFO was tracking teenage
6 smokers 14 to 17?

7 A. I -- I don't recall it. Obviously there has
8 been some look at the -- at the data and -- and some
9 memo written to Mr. Frydman. I don't recall this
10 before.

11 Q. Did you ever see data of the kind that is
12 contained within this exhibit in the market research
13 area while you were employed at RJR?

14 A. Yes, I've seen this in the tabulation books.

15 Q. And it would have been information that came
16 from NFO?

17 A. I believe so, yes.

18 Q. Now the second paragraph in the introduction
19 section, the last sentence, says "The data regarding
20 teenagers, new smokers, and quitters is a natural
21 by-product of the tracking of adult smokers." Do you
22 see that?

23 A. Yes.

24 Q. Do you know what that means?

25 A. Well, in general I -- I do.

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1 Q. What's your understanding of what that means?

2 A. Let me attempt to explain it. The way National
3 Family Opinion worked is they would send a survey
4 form to the female head of household, so their
5 contact with each family was with the female head of
6 household. She was then responsible to get other
7 members of her family to fill out that questionnaire,
8 and -- and so that the total questionnaire that
9 would -- would then be something that the -- that the
10 female head of household had done.

11 Now what was the phrase again? I've lost track
12 to where the phrase was that you referred to.

13 Q. It's the last sentence of the second paragraph
14 under "INTRODUCTION," "... a natural by-product of
15 the tracking of adult smokers."

16 A. Yeah. Okay, I'm back on track. You know, in
17 the process of the female head of household doing
18 this job -- and it wasn't just for cigarettes; she
19 was doing it for many other product categories as
20 well -- that data ended up being returned with
21 everything else, so in that sense, it was a
22 by-product of the process. I don't believe that she
23 was told to get underage smoking, but it would --
24 that -- that material would come in with the data and
25 it was separated from the adult smoking stuff into a

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1 separate book because, you know, it was not part of
2 the main books that we used.

3 Q. What --

4 When you refer to books, what are you referring
5 to?

6 A. Well you get a very large set of tabulations
7 of -- of -- of data from NFO. There would be one
8 that has the brand shares among the adult smoking
9 population. It would be all a list of what
10 percentages each brand has. There would be different
11 demographic breaks at the top of that book. There
12 would be many of these -- many books like this. Then
13 there would be another book with switching data in
14 it, of all the people that said they -- they now
15 smoke Salem, for instance, and did not smoke Salem
16 before. There would be a book listing where those
17 gains came from by brand so you could see the source
18 of your gains and the source of your switching
19 losses, and that would be another several books.

20 And when I say "books," there would also be a
21 book that has this group in it that was split out
22 from everything else, and that book would also be
23 included in -- I don't know -- a fairly large number
24 of computer books that were sent to us.

25 Q. When you said that the NFO families -- I don't

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1 know if that's the word you used, but the people to
2 whom the surveys went --

3 A. The female head of household.

4 Q. Right. The households to whom these went got
5 surveys on other products other than cigarette
6 smoking?

7 A. That's correct.

8 Q. But --

9 But when they would get a questionnaire on
10 cigarette smoking, it was directed solely to
11 cigarette smoking; correct?

12 A. I believe at some time we might have asked about
13 other tobacco products. I'm not sure, but it should
14 be, yes.

15 Q. But to the extent these households were being
16 used by NFO to track other kinds of products --

17 A. Uh-huh.

18 Q. -- manufactured by someone other than RJR, the
19 questionnaires that they would get with regard to
20 cigarette smoking was directed solely to
21 tobacco-related products; correct?

22 MS. BIXENSTINE: Objection to form.

23 A. I think so, yes.

24 Q. And if you turn to page three of the document,
25 which is Bates stamped 50125 4291, --

1 A. Yes, sir.

2 Q. -- the paragraph after the bullet points at the
3 top of the page there --

4 A. Uh-huh.

5 Q. -- that starts "The previous report provided a
6 demographic description of 14 to 17 year old smokers,
7 including population, incidence, rate and volume," do
8 you see that?

9 A. Are you referring to the table?

10 Q. No, I'm talking about the paragraph right after
11 the bullet points, the first sentence.

12 A. Right here?

13 Q. Yes.

14 A. Okay.

15 Q. Do you see that sentence?

16 MR. TAYLOR: Sorry, kind of got lost.

17 A. Yes, I see that sentence.

18 Q. And the question I wanted to ask you about that
19 is: Do you recall while you were in the research
20 area at RJR that the -- there were books that had
21 information about smoking -- smokers, 14- to
22 17-year-olds, that included information on
23 population, incidence, rate and volume?

24 A. Yes, I was aware of such books.

25 Q. And just like the books you've described that

1 kept track of adult smoker information on brands and
2 switching, were there similar books for 14- to
3 17-year-olds that kept track of brand preference?

4 A. There was for brand preference. They were not
5 as extensive -- anywhere near as extensive as the --
6 as the adult books.

7 Q. And if you turn to page five, at the top of the
8 page, which is Bates numbered 50125 4293, under "Key
9 Findings," do you see that?

10 A. Yes, sir.

11 Q. The first bullet point says "RJR's share of
12 teenage smokers declined from 21.3 percent in Spring
13 1979 to 19.9 percent in Fall 1979."

14 A. I see that.

15 Q. Is that information that was kept in the books
16 that -- that were kept for 14- to 17-year-olds, the
17 RJR share among that segment of the smoking
18 population?

19 A. I believe so, yes.

20 Q. Including the change from six-month period
21 either up or down with regard to the share of teenage
22 smokers?

23 A. I don't know.

24 Q. At least it was kept with regard --

25 A. For one year.

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1 Q. -- to this exhibit; correct?

2 A. Yes.

3 MR. FINZEN: I'm going to have you mark
4 this document, please, next.

5 (Plaintiffs' Exhibit 1027 was marked
6 for identification.)

7 (Discussion off the stenographic record.)

8 BY MR. FINZEN:

9 Q. Mr. Nordine, I'm going to hand you what's been
10 marked as Plaintiffs' Exhibit 1027, Bates stamp
11 numbered 50048 7414 through 7416, and ask you to
12 please review that document, tell me whether you've
13 seen it before. Will you need some time to review
14 it?

15 A. Yes.

16 MR. FINZEN: Let's go off the record then.

17 THE REPORTER: Off the record, please.

18 (Discussion off the record.)

19 BY MR. FINZEN:

20 Q. Mr. Nordine, off the record you've had a chance
21 to review Plaintiffs' Exhibit 1027?

22 A. Yes, sir.

23 Q. Is this a document that you have seen before?

24 A. I don't recall seeing it before.

25 Q. It bears the date of March 15, 1974 and is a

1 letter on RJR Reynolds Tobacco Company letterhead
2 signed by a Mrs. Joan F. Stuart. Do you see that?

3 A. Yes.

4 Q. Do you know who Joan Stuart is?

5 A. Yes.

6 Q. Is she someone who was employed in the market
7 research department while you were employed at R.J.
8 Reynolds?

9 A. She was not an employee of the company.

10 Q. She was not?

11 A. She was not.

12 Q. What was she with regard to the company?

13 MS. BIXENSTINE: Objection to the form of
14 the question. At what time?

15 MR. FINZEN: 19 --

16 MR. TAYLOR: When he joined the company?

17 MR. FINZEN: Well when he knew her for the
18 first time, what was her relationship to R.J.
19 Reynolds?

20 A. She was a sort of roving consultant for the
21 company. She was not on the company's payroll.

22 Q. Do you know whether she had been on the
23 company's payroll prior to your joining the company?

24 A. A very long time ago she had been on the payroll
25 of the company.

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1 Q. Do you know what her status was as of March 15,
2 1974?

3 A. I am unsure. No, I don't know.

4 Q. While she was a consultant for the company, do
5 you know whether she would send letters out on RJR
6 letterhead?

7 A. Apparently she did in this instance.

8 Q. Do you know of any other instances after you
9 joined the company where she sent letters out on RJR
10 stationery?

11 MS. BIXENSTINE: Objection to the form.

12 Mr. Nordine didn't start until 1975, and this letter
13 is dated March 15th, 1974.

14 Q. My question is: Do you know of any other
15 instances after you joined the company where she sent
16 letters out on RJR letterhead?

17 MR. TAYLOR: Still objection to form.

18 A. I don't know. I -- I don't know about company
19 letterhead.

20 Q. So you don't know while you were employed at RJR
21 whether Mrs. Stuart --

22 A. That's correct.

23 Q. -- ever sent a letter out on RJR letterhead?

24 A. I don't know. No, I don't know.

25 Q. Now did you know who Stanford Odesky is?

1 A. I had heard the name, yes.

2 Q. You recognize him as somebody who was with the
3 National Family Opinion organization?

4 A. Yes, sir.

5 Q. Now was it your understanding that the surveys
6 used by the NFO to track cigarette smoking for R.J.
7 Reynolds were surveys that were devised by R.J.
8 Reynolds, survey questionnaires?

9 A. I don't -- let me answer this other than "yes"
10 or "no," I'm afraid. My understanding is Esty
11 started this so that the -- the beginning of -- the
12 design of the questionnaire was originally something
13 handled outside of Reynolds, which I have no
14 knowledge of whatsoever. The purpose of using NFO
15 was not to track people's brand shares and switching
16 behavior. The purpose was to provide a pool for
17 product testing and that the books that were created
18 was an artifact of the product testing screening that
19 was done.

20 So your question had a number of subpoints in it
21 that I was trying to address with what I just said.

22 Q. Well in -- in this particular letter, it refers
23 to the April screening in the re: column line.

24 A. Yes.

25 Q. Do you see that?

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1 A. Yes.

2 Q. And in the first numbered paragraph, there is a
3 reference to using the cover letter with the
4 following exceptions. Do you see that?

5 A. Yes.

6 Q. And those exceptions were being suggested by
7 Mrs. Stuart; correct?

8 A. Yes.

9 MS. BIXENSTINE: Objection. The document
10 speaks for itself.

11 MR. TAYLOR: The letter's just what it
12 says.

13 A. Yes, that's what the letter said.

14 Q. And in the second numbered paragraph Mrs. Stuart
15 is saying that R.J. Reynolds wants to exclude Section
16 4 from the questionnaire?

17 A. Yes.

18 MS. BIXENSTINE: Objection.

19 Q. And Question 5 will be renumbered and so on;
20 correct?

21 A. That's what the memo says.

22 Q. And in the third paragraph, Mrs. Stuart is
23 saying that R.J. Reynolds wants to add a section to
24 the questionnaire; correct?

25 A. Correct.

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1 Q. And in the fifth numbered paragraph, it refers
2 to the processing of the screening forming two groups
3 of respondents; correct?

4 A. Correct.

5 Q. Those aged 14 to 17 and those 18 and over?

6 A. Yes.

7 Q. So it's correct then, is it not, that the NFO
8 screening data had as a specific separate respondent
9 target group ages 14- to 17-year-olds?

10 MR. TAYLOR: Well objection, sir. I think
11 he can -- I mean, he can confirm that you have
12 accurately read this piece of paper. I mean, you're
13 cross-examining him on a document that I believe he
14 said he has no recollection of having seen, and I
15 suggest that he's not the appropriate witness to --
16 for you to try to extract that kind of, quote,
17 "evidence," end quote. It's just not a fair
18 question.

19 Q. While you were at R.J. Reynolds in the research
20 department, sir, is it true that the NFO screening
21 data had as a specific separate respondent target
22 group ages 14- to 17-year-olds?

23 MS. BIXENSTINE: Objection, calls for
24 speculation.

25 A. I'm objecting to your phrase "target group." As

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1 I -- as I've said before, data among those
2 individuals was in fact produced by NFO and those
3 groups were split off from the main study that was
4 used, and I -- I -- I don't agree it's fair to call
5 that a target group because it was not a target group
6 for the company.

7 Q. But it was at the company's request that the
8 groups were split into separate categories: Ages 14
9 to 17 and 18 and over; correct?

10 A. That is --

11 MS. BIXENSTINE: Objection.

12 A. -- what the memo says.

13 Q. And that was the practice while you were
14 employed at R.J. Reynolds; correct?

15 MS. BIXENSTINE: Objection.

16 A. For some time at least. I don't know for the
17 entire time or part of it, but for a while, yes, that
18 was true.

19 Q. And in the second page of the letter, paragraph
20 numbered eight, it refers to an individual by the
21 name of Mike Reissing or Reissing. Do you see that?

22 A. Yes, sir.

23 Q. Is that someone you knew at William Esty
24 Company?

25 A. He didn't work for William Esty Company. He

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1 worked for NFO.

2 Q. Oh, I'm sorry. He was with -- an NFO

3 individual?

4 A. That's correct.

5 Q. Okay. Did you know him as an NFO employee?

6 A. Yes, I did.

7 Q. Was William Esty at -- at the point in time when

8 you joined the company doing the number crunching of

9 the surveys when they were returned from NFO?

10 A. I don't believe so.

11 Q. Do you know what William Esty did with regard to

12 the NFO data that involved tapes and IBM cards?

13 A. No.

14 Q. And in paragraph nine there is a reference to a

15 letter of agreement between NFO and RJR. Do you see

16 that?

17 A. Let me -- which paragraph is that reference in?

18 Q. Nine.

19 A. The very top?

20 Q. Yes.

21 A. Yes.

22 Q. Have you ever seen that letter of agreement?

23 A. I don't know.

24 Q. Do you recall ever seeing any letter of

25 agreement between NFO and R.J. Reynolds with regard

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1 to the NFO tracking data?

2 A. You know, I don't know.

3 Q. You may have? You just don't recall?

4 A. I may have. I may not have. I don't recall.

5 Q. Was it your understanding with regard to this
6 every-six-month frequency of the NFO data gathering
7 that as is set forth in -- in this exhibit under
8 paragraph nine, that the policy of NFO was not to use
9 the same family for the same product category every
10 six months?

11 A. I'm aware --

12 MS. BIXENSTINE: Objection.

13 A. -- of that subject. I don't know anything
14 specific about it, but the -- the -- there was --
15 there was at times concern about continuing to use
16 the same individuals over and over again. And -- and
17 I believe Reynolds had a large volume of product
18 testing need, so there was -- that was seen as an
19 issue by some people.

20 Q. And was it your understanding that NFO was --
21 was willing for RJR's survey data to waive that
22 requirement, that they not be utilized more than once
23 in a six-month period?

24 A. I don't know.

25 Q. Now at paragraph ten at the bottom of page two

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1 and going over to the top of page three of the
2 document, there is a reference to when processing
3 reports --
4 A. Uh-huh.
5 Q. -- we'd like to receive them in -- in a certain
6 order.
7 A. Uh-huh.
8 Q. While you were in the market research department
9 at RJR, did you see reports regarding smoking
10 incidence and brand preference for ages 14 to 17?
11 A. Yes, I saw them.
12 Q. Did you see NFO brand switching matrix for ages
13 14 to 17?
14 A. Yes. I'm sorry, wait a minute.
15 Q. Number seven under paragraph ten.
16 A. I don't recall. My initial answer on point
17 number seven in the menu -- in the menu was to say
18 yes, and I said that because I didn't realize he was
19 talking about the 14-to-17-year-old book.
20 Q. Okay.
21 A. And --
22 Q. My question --
23 A. I am unsure whether I have seen that particular
24 book.
25 Q. Are there any other books with -- pertaining to

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1 14- to 17-year-olds that were generated from the NFO
2 data that you can recall while you were employed
3 there?

4 MR. TAYLOR: Other than this list of --

5 A. Not that I recall, no.

6 Q. Now in addition to the NFO data, RJR designed
7 its own studies to examine the smoking habits of kids
8 under the age of 18, did they not?

9 MS. BIXENSTINE: Objection to the form of
10 the question.

11 A. I am not aware of any such study.

12 Q. Have you seen data generated from RJR studies on
13 the smoking habits of kids under the age of 18 other
14 than the NFO data?

15 A. I have not seen any such information that was
16 produced by RJR. Again the media published these --
17 this information, and it's possible that I've seen
18 stuff from studies done outside of the company.

19 Q. While you were at RJR, did you see any data in
20 the market research department that tracked cigarette
21 smoking preference for kids as young as 12?

22 A. I don't recall such a -- such a document, no.

23 Q. Did you see any data that related cigarette use
24 in any way by children as young as 12?

25 MS. BIXENSTINE: Objection to the form.

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1 A. No, I don't think so. I mean, I thought that's
2 what your previous question was.

3 MR. FINZEN: Would you mark this, please.

4 (Discussion off the stenographic record.)

5 (Plaintiffs' Exhibit 1028 was marked
6 for identification.)

7 BY MR. FINZEN:

8 Q. Mr. Nordine, handing you what's been marked as
9 Plaintiffs' Exhibit 1028, bearing Bates numbers
10 501400341 through 0342, and I ask you to please look
11 at that document and tell me whether you've seen it
12 before. Do you need some time?

13 A. I would like some time, yes.

14 Q. Why don't we review it off the record then.

15 THE REPORTER: Off the record, please.

16 (Discussion off the record.)

17 BY MR. FINZEN:

18 Q. Mr. Nordine, you've had a chance to review
19 Plaintiffs' Exhibit 1028 while we were off the
20 record?

21 A. Yes.

22 Q. Have you seen this document before?

23 A. No, not that I recall.

24 Q. The document is dated April 9, 1968, and it is
25 addressed to a Mr. R. A. Blevins, Junior. Do you

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1 know that individual?

2 A. I have heard the name. I don't know the

3 individual.

4 Q. What do you know of the individual from what you

5 have heard?

6 A. For a brief time, he was head of the marketing

7 research department before I came to the company.

8 Q. Do you know when he was last employed at R.J.

9 Reynolds?

10 A. I don't know the exact date. He wasn't -- I

11 don't know, no.

12 Q. Do you know whether he was there when you joined

13 the company in 1975?

14 A. He was not in the marketing research department

15 at that time.

16 Q. Do you know the person whose signature's on the

17 second page of the document under the typed name

18 T. P. Haller?

19 A. I have heard the name.

20 Q. And was he an employee in the market research

21 department at some time at R.J. Reynolds?

22 A. Not at the time that I was at R.J. Reynolds.

23 Q. Did you understand that he had worked in the

24 market research department at some point before you

25 arrived at R.J. Reynolds?

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1 A. That was my understanding.

2 Q. This document, which is dated April 9 of 1968,
3 is entitled "Re: TEENAGE AND ADULT SMOKING
4 ATTITUDES." Do you see that?

5 A. Yes.

6 Q. And the first paragraph is a one-sentence
7 paragraph that reads "This will outline the kind of
8 study we would like to do, on a semi-annual basis, to
9 obtain consumer attitudes towards smoking,
10 particularly as they apply to the health issue." Do
11 you see that?

12 A. Yes, sir.

13 Q. Did you see any semiannual study while you were
14 employed at R.J. Reynolds other than the NFO study?

15 MS. BIXENSTINE: Objection to the form of
16 the question.

17 A. No, I don't believe I did.

18 Q. The second paragraph, second sentence, says
19 "... most importantly, it will put light on the very
20 vital teenage sector of the market." Do you see
21 that?

22 A. I see that.

23 Q. And in the next paragraph, the third paragraph,
24 it says "We plan to conduct 1,600 interviews: Half
25 of the sample will consist of teenagers (12 to

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- 1 20)" Do you see that?
- 2 A. I see that.
- 3 Q. While you were employed at RJR in the market
- 4 research area, did you see information with regard to
- 5 public attitudes towards smoking which gathered
- 6 attitudes of children ages 12 to 17?
- 7 A. I've already said that I have not seen anything
- 8 and I don't know what they're talking about in this
- 9 memo.
- 10 Q. This doesn't refresh your recollection in any
- 11 way of something you'd seen while you were at RJR?
- 12 A. Not at all.
- 13 Q. And the reference here is with -- that this be
- 14 done by interview. Do you see that?
- 15 A. Could you point out the -- the --
- 16 Q. The fourth paragraph.
- 17 A. Numbered four; right?
- 18 Q. Not numbered four, no. The fourth paragraph
- 19 from the top before the numbered paragraphs begin.
- 20 A. Okay, I'm with you.
- 21 Q. That it's to be done -- proposed to be done by
- 22 interview form; is that correct? That's what it
- 23 says?
- 24 A. That's what the memo says, yes.
- 25 Q. Are you aware of any surveys that were done

1 while you were employed at RJR of consumer attitudes
2 towards smoking that were done by survey -- I'm
3 sorry, that were done by interview rather than by
4 written survey form?

5 A. Yes, I'm aware of studies that were done that
6 way, yes.

7 Q. Who did the studies that you're aware of that
8 were done by interview form?

9 A. What are -- can you tell me the specific subject
10 again? I'm -- I'm not sure of --

11 Q. On any subject that relates -- the question
12 related to consumer attitude towards smoking.

13 A. My group did a study of consumer attitudes
14 towards smoking among adult smokers, and I believe it
15 was also done among adult nonsmokers as well.

16 Q. Okay.

17 A. But I'm not aware of anything that resembles the
18 one in the document we're talking about.

19 Q. And while you were employed at RJR, did you ever
20 see any data that purported to be the results of any
21 interviews conducted among individuals ages 12 to
22 17?

23 A. No, I haven't seen that.

24 Q. Have you seen while you were at RJR in the
25 market research area data collected with regard to

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1 the things mentioned in the numbered paragraphs at
2 the bottom of this page, such as cigarette usage?

3 MS. BIXENSTINE: Objection to the form.

4 A. Which paragraph are you -- the number five?

5 Q. Paragraph number one talks about gathering data
6 on cigarette usage.

7 MS. BIXENSTINE: Objection to the form of
8 the question.

9 Q. Do you see that?

10 MR. TAYLOR: You want him to read each of
11 those paragraphs again to respond?

12 MR. FINZEN: No, I just -- I want to ask
13 him some questions, and I'm going to refer to some of
14 the things that are in these paragraphs.

15 Q. And I'm asking first whether while you were at
16 RJR you saw data collected with regard to cigarette
17 usage among 12- to 17-year-olds.

18 A. I don't recall specific 12- to 17-year-olds at
19 all. I've already said that I've seen data among 14
20 to 17, I believe the phrase was, and I have seen
21 that.

22 Q. Okay.

23 A. I don't recall other data.

24 Q. So it's your testimony you don't recall seeing
25 any data that went below the age of 14?

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1 A. I only recall the specific NFO data.

2 Q. If this is referring to gathering data then on
3 ages 12 and above, is it your belief that this is not
4 referring to the NFO data?

5 A. That would be my belief, yes.

6 Q. Because to your knowledge, the NFO data never
7 surveyed attitudes about smoking of people younger
8 than 14?

9 MS. BIXENSTINE: Objection to the form of
10 the question. You're suggesting that NFO surveyed
11 attitudes of 14- to 17-year-olds.

12 A. Sir, as far as I'm concerned, I'm not even sure
13 this study was done. I mean, everything that a memo
14 proposes to do is not done, and I've never seen such
15 a thing as this.

16 Q. And my question was broader than -- than this,
17 and that is: You've never seen any data that -- that
18 purported to study anything about cigarette smoking
19 in people under the age of 14; is that correct?

20 A. That -- that is correct. I do not recall any
21 study, seeing any study, that dealt with that.

22 Q. In the second page of the document, the first
23 full paragraph, in roughly the middle of the
24 paragraph there is a sentence that begins "In this
25 study" Do you see that?

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1 A. Yes, I see that.

2 Q. And it says "In this study we" will obtain --
3 "we would use both multiple choice questions and
4 sentence completion," paren, "(see attached Exhibit)
5 to obtain attitudes towards smoking." Do you see
6 that?

7 A. I see that.

8 Q. Do you recall while you were at RJR seeing the
9 results of surveys that were done studying the
10 attitudes of people towards smoking?

11 A. Yes, I've already said that my group did such
12 studies.

13 Q. And other than your group, did you see surveys
14 of data gathered with regard to people's attitudes
15 towards smoking?

16 A. Yes.

17 Q. And by whom were those done?

18 A. A number of people. I've seen Yankelovich
19 periodically produces such information on an ongoing
20 basis. I think I've seen Roper polls over time. It
21 could be Harris polls. I don't know the specifics,
22 but there were many of them that I was aware of.

23 Q. Other than your group, was there anyone else
24 within RJR that did a survey of attitudes towards
25 smoking that the results of which you saw?

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1 A. It is my belief that -- that somebody in the
2 department tracked that after we had done our
3 studies. I am not sure of that fact, however.

4 Q. Your study was done on a onetime basis?

5 A. Yes.

6 Q. And what year was that?

7 A. I am not sure. In the '80s, first half of the
8 '80s more than likely.

9 Q. And how was your study conducted?

10 A. I believe it was a telephone survey. I am
11 unsure of this, though.

12 MR. TAYLOR: I would suggest when you reach
13 a subject break, it's probably about time for lunch.
14 My, how time flies.

15 MR. FINZEN: Okay.

16 MR. TAYLOR: I can call and see if it's
17 in.

18 MR. FINZEN: Why don't we go off the
19 record.

20 THE REPORTER: Off the record, please.

21 (Discussion off the record.)

22 BY MR. FINZEN:

23 Q. With regard to the NFO data that you saw on the
24 semiannual basis --

25 A. Uh-huh.

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1 Q. -- that we talked about earlier, as I understand
2 it, those were done by written questionnaires.

3 A. Yes, it was a mail questionnaire, I believe is
4 the term.

5 Q. And that was addressed to the female head of the
6 household?

7 A. I believe so.

8 Q. And as such, there is nothing that prohibited
9 RJR from sending that questionnaire directed only to
10 the adult members of the household, is there?

11 MS. BIXENSTINE: Objection.

12 A. I don't know.

13 Q. Is there --

14 Based upon your understanding of -- of
15 conducting surveys and interviews, the lower limit of
16 the age of the person interviewed can be set by the
17 person doing the interview; correct?

18 A. We would do that in most of our surveys, yes.
19 This was handled differently. That's why I hesitate
20 and say I don't know in this case.

21 Q. And in the case of the written NFO survey, it
22 could have been written to be addressed only to
23 people 18 years and older; correct?

24 A. It may have been.

25 MS. BIXENSTINE: Objection.

1 A. I don't know.

2 Q. Well --

3 A. I don't recall what the specific instructions
4 were on the questionnaire.

5 Q. During the time that you were there, you saw NFO
6 data that was obtained from those surveys, however,
7 you said for people ages 14 through 17; correct?

8 A. That -- that's correct, yes.

9 Q. Is it your understanding that that data was
10 gathered by the written question being directed -- or
11 survey being directed to and answered by 14- to
12 17-year-olds?

13 MS. BIXENSTINE: Objection, asked and
14 answered. He said it was directed to the female head
15 of household.

16 A. I just don't know. I -- I don't know. I don't
17 remember what the instructions were on the
18 questionnaire, and I can't answer your question as a
19 result of that.

20 Q. If RJR had wanted to be certain not to obtain
21 information from 14- to 17-year-olds, that
22 instruction could have been written onto the
23 questionnaire; correct?

24 A. It may have been written on the questionnaire
25 for all I know. I don't know. But ordinarily in a

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1 study we are talking with the individual themselves
2 and so we make sure that the person we're talking to
3 is 18 or older. In this case, you know, we have
4 little control over it except by whatever
5 instructions were on the questionnaire, and I don't
6 know what those were.

7 Q. But you've done written questionnaires before
8 yourself; correct?

9 A. Yes.

10 Q. And when you do that, if the intent of the
11 questionnaire is to be given to a person of a certain
12 age and older, that's written onto the questionnaire;
13 correct?

14 A. I did not do any other study that was involved
15 somebody passing a questionnaire on to somebody else,
16 you know. The studies that we did, the person that
17 the questionnaire was given to was the person doing
18 it. So, you know, I have no basis for commenting on
19 your pass-along idea.

20 Q. I'm -- I'm asking whether you've done written
21 questionnaires that were sent to individuals to fill
22 out.

23 A. Yes, I've -- yes, we have done that.

24 Q. And when you've done that, the age -- the
25 minimum age of the person to whom the questionnaire

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1 should be sent and filled out is listed on the
2 questionnaire; correct?

3 A. It is, yes.

4 Q. So nothing prohibits the questionnaire from
5 having a lower limit written on it, correct, age
6 limit?

7 A. Sorry, I'm really sorry. Could you phrase it
8 again?

9 Q. Sure.

10 A. I'm sorry to do this to you continually.

11 Q. In good -- in good --

12 In good interviewing practice, if your age-group
13 is 18 years and older, there will be an instruction
14 to that effect on the written questionnaire, --

15 A. Uh-huh.

16 Q. -- that it is intended to be filled out only by
17 persons 18 and over?

18 A. That's correct.

19 Q. And there will be a place --

20 MS. BIXENSTINE: Objection to the form of
21 the question.

22 Q. And there will be a place for the person's age
23 to be on the form itself; correct?

24 A. That's right.

25 Q. And if inadvertently someone under the age that

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1 was intended to be gathered filled it out, said they
2 were 17 when the minimum age was 18, you would ignore
3 that data in gathering the questionnaires; correct?

4 MS. BIXENSTINE: Objection to the form.

5 A. That is correct, yes.

6 MR. FINZEN: Why don't we take a break
7 here.

8 MR. TAYLOR: Okay.

9 THE REPORTER: Off the record, please.

10 (Luncheon recess taken at 12:26 o'clock
11 p.m.)

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1 AFTERNOON SESSION

2 (Deposition reconvened at 1:14 o'clock
3 p.m.)

4 MR. FINZEN: Thank you.

5 BY MR. FINZEN:

6 Q. Mr. Nordine, while you were at RJR, did the
7 company consider knowledge about the smoking habits
8 of kids under the age of 18 to be critical to the
9 company?

10 MS. BIXENSTINE: Objection, calls for
11 speculation.

12 A. I don't believe so, no.

13 Q. While you were there, did RJR consider the
14 under-18-year-old smokers to be the vital teenage
15 sector of the market?

16 A. No, I don't believe so.

17 MS. BIXENSTINE: Objection, calls for
18 speculation.

19 Q. The tracking information that RJR did have on
20 the smokers under -- under the age of 18, however,
21 showed that by the 1970s RJR products were losing
22 market share among that group; isn't that correct?

23 A. You showed me a memo that was written to that
24 effect at that time I guess.

25 MS. BIXENSTINE: Objection. It mis -- I

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1 think it was a 1980 memo.

2 Q. My question goes to the 1970s. Do you have any
3 knowledge as to whether by the 1970s the tracking
4 data that R.J. had on smokers under the age of 18
5 showed that RJR products were losing market share
6 among that age-group?

7 MS. BIXENSTINE: Objection, calls for
8 speculation.

9 A. Could you be more specific than the 1970s?

10 Q. Anytime in the 1970s.

11 A. I believe a memo was written dated I think 1980
12 that we went over this morning that said that in --
13 in the memo.

14 Q. And separate and apart from that memorandum,
15 while you were there, from 1975 on, did you have an
16 understanding in the research that you were involved
17 in that the RJR products were losing market share
18 among the under-18-year-old smokers?

19 A. I would like to rephrase it only to say that I
20 thought that our shares were very low in that group.
21 I don't recall their gaining or losing or anything
22 like that.

23 Q. Did the tracking data that RJR had of smokers
24 under the age of 18 by the early 1970s show that
25 Marlboro was a brand that was gaining substantial

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1 share among the under-18-year-old smokers?

2 A. I believe that to be true, yes.

3 MR. FINZEN: Mark this document next,
4 please.

5 (Plaintiffs' Exhibit 1029 was marked
6 for identification.)

7 BY MR. FINZEN:

8 Q. Mr. Nordine, I want to show you now an exhibit
9 marked Plaintiffs' 1029, Bates numbered 50235 3747
10 through 3750, ask you to please look at that
11 document, tell me whether you've seen it before. Do
12 you need some time to review it?

13 A. Yes, I do.

14 MR. FINZEN: Let's do it off the record,
15 please.

16 THE REPORTER: Off the record, please.

17 (Discussion off the record.)

18 BY MR. FINZEN:

19 Q. Off the record, Mr. Nordine, you've had a chance
20 to review Plaintiffs' 1029; is that correct?

21 A. That's correct.

22 Q. Have you seen this document before?

23 A. I don't recall seeing it before, no.

24 Q. It's a document dated September 26 of 1972 with
25 a name at the bottom and initials JHS, the name typed

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1 below that of J. H. Sherrill, Junior. Do you see
2 that?

3 A. Yes, sir.

4 Q. Is that an individual that you know from --

5 A. Yes.

6 Q. -- your employment at RJR?

7 A. Yes, it is.

8 Q. And in -- was -- is it Mr. Sherrill?

9 A. Yes.

10 Q. Was Mr. Sherrill in the marketing research
11 department when you were there?

12 A. Yes.

13 Q. And it is addressed to Mr. W. S. Smith, Junior.

14 Do you know who Mr. W. S. Smith, Junior, is?

15 A. No.

16 Q. Is that anyone who was an employee of R.J.
17 Reynolds when you were there?

18 A. I don't know.

19 Q. There are a number of handwritten entries at the
20 top of the page. Do you recognize any of that
21 handwriting?

22 A. No.

23 Q. The re: line of the memo says that it's "SHARE
24 OF SMOKERS: BY AGE - TOP TEN BRAND ITEMS." Do you
25 see that?

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- 1 A. Yes.
- 2 Q. And if you turn to the second page of the -- I'm
- 3 sorry, the third page of the document, which has the
- 4 "TOP 10 ITEM SHARE OF SMOKERS BY AGE," Table I.
- 5 A. Yes. I'm sorry, I got Table II here. Just a
- 6 second.
- 7 Q. This shows total smokers by percent under
- 8 various age-groups listed across the top of the page;
- 9 correct?
- 10 A. Yes.
- 11 Q. And under the 14-to-17-year-old column for the
- 12 first entry rank one through ten is Winston King &
- 13 Box; correct?
- 14 A. Yeah, that's correct.
- 15 Q. And that says 13 percent; is that right?
- 16 A. There is a -- there is --
- 17 Q. Under the 14- to 17-year-old?
- 18 A. That is correct.
- 19 Q. And Marlboro King & Box, it's 40 percent?
- 20 A. Correct.
- 21 Q. Do you -- strike that.
- 22 Have you seen this kind of data at the company
- 23 while you were in the market research area; that is,
- 24 share of smokers by age, percent for brands?
- 25 A. Yes.

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1 Q. So --

2 So if I'm reading this correctly then, what this
3 indicates is that at least as of this particular
4 survey that was done in, according to the first page
5 of the memo, second paragraph, share by age in April
6 1972, am I reading this correctly, that that survey
7 showed 40 percent of the 14- to 17-year-olds were
8 smoking Marlboro or reported smoking Marlboro King &
9 Box and 13 percent Winston King & Box? Am I reading
10 that correctly?

11 A. I don't know. The table's not labeled. It
12 makes sense, but I don't know if, you know --

13 Q. Based upon --

14 A. It sounds right.

15 Q. Based upon the kinds of tables like this you saw
16 when you were there, is that what the percentages
17 would tend to mean?

18 A. That's what I would think, yes.

19 MS. BIXENSTINE: Objection.

20 Q. Now if you will take a look, sir, at Exhibit
21 1025 --

22 A. Can I put this one away now?

23 Q. Yes.

24 A. Okay. Is this not the same subject we talked
25 about before?

1 Q. There's no question pending right now. I'm just
2 asking you to --

3 A. Okay.

4 Q. -- turn to that document.

5 MR. TAYLOR: Yes, that is the document you
6 previously had --

7 THE WITNESS: Uh-huh.

8 MR. TAYLOR: -- in front of you.

9 Q. I'm sorry, 1026 is what I wanted you to take a
10 look at.

11 MR. TAYLOR: Okay. 1026 is in the pile.

12 MR. FINZEN: Here it is.

13 MR. TAYLOR: Okay.

14 Q. This is a document that we looked at earlier
15 this morning.

16 A. Yes.

17 Q. And this purports on the first page to reflect
18 data gathered in the fall of 1979, is that correct,
19 in the first paragraph?

20 A. That's what -- that's what the note says, yes.

21 Q. And if I'm understanding correctly at the bottom
22 of the page in the last bullet paragraph, the
23 correct -- there that it says Marlboro at that point
24 had 52 percent of the teenage smokers in the fall of
25 1979?

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1 A. That's correct.

2 Q. And based upon your recollection while you were
3 at the company, is that your understanding as well,
4 that the share of Marlboro throughout the 1970s among
5 teenage smokers had continued to grow on sort of a
6 year-by-year basis?

7 MS. BIXENSTINE: Objection, calls for
8 speculation.

9 A. I believe that to be true.

10 Q. And this is in the same age-group that we looked
11 at just a moment ago for Exhibit 1029 on the front
12 page of Exhibit 1026? It's the 14-to-17 age-group
13 that they're addressing?

14 A. That is right.

15 Q. So that between 1972 and 1979, the -- the share
16 of smokers among the 14- to 17-year-olds for Marlboro
17 grew from 40 to 52 percent; is that correct?

18 A. If the figures are comparable.

19 Q. You were now at the -- at the company by the
20 fall of 1979; correct?

21 A. Yes, sir.

22 Q. Was this an issue that you recall being of
23 concern to R.J. Reynolds, that it was gradually
24 losing share in the 14-to-17-year-old market to
25 Marlboro?

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1 A. I think what is -- what was a concern of the
2 company is we were losing share among 18- to
3 24-year-old smokers. This document, I think as the
4 document says, was used only for forecasting
5 purposes. And I -- I believe this document has --
6 addresses that purpose, not that this number is a
7 concern of the company's at all.

8 Q. I'm -- I'm not asking you about the document.
9 I'm asking you about your knowledge generally --

10 MS. BIXENSTINE: He answered the question.

11 Q. -- by the end of 1979. Was it your knowledge
12 generally that it was a matter of concern within RJR
13 that they were losing significant market share in the
14 14-to-17-year-old age-group to Marlboro?

15 A. No, it is not my opinion.

16 MS. BIXENSTINE: Objection, asked and
17 answered.

18 I'm sorry, you have to wait so that I can --

19 THE WITNESS: I'm sorry.

20 MS. BIXENSTINE: -- finish my objection
21 before you answer.

22 MR. FINZEN: You may answer.

23 MR. TAYLOR: Continue your answer.

24 A. No, that was not a big concern of the company in
25 my opinion.

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1 Q. And was it your understanding by the end of 1979
2 that Marlboro was essentially the only brand that was
3 showing substantial gains in the under-18-year-old
4 smoking age-group?

5 A. As far as I know, yes.

6 Q. At about that time, did you recall anyone inside
7 of RJR suggesting that what RJR needed was a new
8 youth-appeal brand?

9 A. No, I am not aware of anybody using that
10 particular term.

11 Q. And if I'm understanding correctly looking at
12 Exhibit 1026, the share of Winston in the first
13 bullet point on the front page of Exhibit 1026 in the
14 fall of 1979 was 7.2 percent; is that correct?

15 A. That's right.

16 Q. And that would be, referring back to Exhibit
17 1029, down from the 13 percent that's reported on
18 that exhibit?

19 MR. TAYLOR: Whatever the exhibits say,
20 sir, the exhibits say. He's not --

21 A. I'm getting lost in the numbers.

22 (Discussion off the stenographic record.)

23 MS. BIXENSTINE: Objection to the form of
24 the question.

25 MR. TAYLOR: You know, I don't know --

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1 MS. BIXENSTINE: It's misleading.

2 MR. TAYLOR: The documents say what the
3 documents say, so that's --

4 BY MR. FINZEN:

5 Q. Well if the document says 13 percent in 1972 and
6 7.2 percent in 1979, that would be a decline in the
7 Winston share while the Marlboro share was
8 increasing; correct?

9 MS. BIXENSTINE: Objection, misleading.
10 You're assuming that it's the same base.

11 A. Yeah. If that is the same base, your statement
12 stands as correct.

13 Q. By 1979 R -- RJR knew, did it not, that most
14 smokers begin smoking regularly and select a usual
15 brand at or before the age of 18?

16 A. I don't know what they knew in 1979.

17 Q. Was that your understanding, sir, from 1975
18 until 1979, that most smokers who begin smoking begin
19 before the age of 18?

20 MS. BIXENSTINE: Objection to the form of
21 the question. It's vague as to what you mean by
22 "begin."

23 A. I don't know. I did not think about or deal
24 with that subject in 1970 -- at that time.

25 Q. Did you know when you started working at RJR in

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1 1975 that RJR had statistics that showed that more
2 than 50 percent of men begin smoking before the age
3 of 18?

4 A. I do not recall being -- seeing that statistic
5 that you refer to.

6 Q. At any time while you were employed at RJR, did
7 you become aware of RJR having statistics that showed
8 more than 50 percent of men who smoke start smoking
9 before the age of 18?

10 A. At some point in time, I became aware of that,
11 yes.

12 Q. And did you also become aware that the median
13 age for men who begin to smoke was 17?

14 MS. BIXENSTINE: Objection to the form. By
15 "begin," do you mean when they take their first puff
16 or begin to smoke regularly?

17 MR. FINZEN: You may answer.

18 A. I have a hard time recalling any specific figure
19 like you are giving me about something that happened
20 over 10 years ago, perhaps 15 years ago, so I have to
21 say I don't know because you're setting specific
22 figures that I simply can't recall.

23 Q. Before we leave Exhibit 1029, if you have it
24 there, I want to ask you.

25 A. Okay.

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1 Q. There are several people who are copied on that
2 document. Do you see it on the second page?

3 A. Yes.

4 Q. Do you know who Mr. Colin Stokes is?

5 A. Yes.

6 Q. And who is he?

7 A. He was an executive of the company. I'm not
8 sure of his exact title, but he was an executive at
9 that time.

10 Q. Do you know who Mr. J. H. Stone is?

11 A. No, I don't.

12 Q. Do you know who Mr. Blevins is?

13 A. He was head of the department at one time. I
14 don't know what his position is at that time, at the
15 time of this memo.

16 Q. Okay. But that -- "the department," you mean
17 market research?

18 A. That's what I mean, yes.

19 Q. And Mr. Haller?

20 A. He was also a member of the marketing
21 research -- research department before I got there.

22 Q. Okay.

23 MR. FINZEN: If you would mark this,
24 please.

25 (Plaintiffs' Exhibit 1030 was marked

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1 for identification.)

2 BY MR. FINZEN:

3 Q. Mr. Nordine, I'm showing you what's been marked
4 as Plaintiffs' Exhibit 1030, Bates numbered 50122
5 1308 through 1317, and I'd ask you to look at that,
6 please, and tell me if you can identify that
7 document. Do you need some time to review it?

8 A. Yes.

9 Q. All right.

10 MR. FINZEN: Let's do that off the record,
11 please.

12 THE REPORTER: Off the record, please.

13 (Discussion off the record.)

14 BY MR. FINZEN:

15 Q. Mr. Nordine, off the record you've had a chance
16 to review Plaintiffs' Exhibit 1030.

17 A. Yes.

18 Q. And is this a document that you've seen before?

19 A. I don't recall.

20 Q. Is it possible that you've seen this before and
21 you don't remember, or you're -- what are you saying
22 when you say you don't recall?

23 A. It's just possible I've seen it before, and I
24 don't -- I don't recall.

25 Q. It's a document that is dated July 3 of 1974,

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- 1 and it has the name at the top as an addressee
- 2 apparently a Mr. F. H. Christopher, Junior.
- 3 A. Yes.
- 4 Q. Is Mr. Christopher in the marketing research
- 5 department?
- 6 A. At that time?
- 7 Q. Yes.
- 8 A. I don't know.
- 9 Q. Was he at any time while you were there?
- 10 A. Not while I was there.
- 11 Q. Do you --
- 12 What was his position with the company when you
- 13 began in 1975?
- 14 A. I don't know.
- 15 Q. Are you aware that he was an RJR employee?
- 16 A. Yes.
- 17 Q. While you were employed with the company?
- 18 A. Yes.
- 19 Q. And the page three of the memo -- I'm sorry.
- 20 Page six of the memo has a typed name and some
- 21 handwritten initials.
- 22 A. Yes.
- 23 Q. The typed name is D. W. Tredennick?
- 24 A. Tredennick is the name.
- 25 Q. Tredennick?

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- 1 A. Yes.
- 2 Q. Is that an individual you recognize?
- 3 A. Yes, I know who that was.
- 4 Q. Was he employed in the market research
5 department when you were at R.J. Reynolds?
- 6 A. He was.
- 7 Q. And what was his job?
- 8 A. He was a group manager in the department, and I
9 believe he was in charge of consumer tracking. I am
10 not certain, however.
- 11 Q. Did he ever report to you while you were in the
12 department?
- 13 A. No.
- 14 Q. In this memorandum, before the introduction, the
15 introductory sentence says "The purpose of this
16 memorandum is to answer the question 'What causes
17 smokers to' -- 'to select their first brand of
18 cigarette?'" Do you see that?
- 19 A. Yes, I see that.
- 20 Q. And then at the bottom of the first page there
21 is a title, a subtitle, called "STARTING AGE." Do
22 you see that?
- 23 A. I see that.
- 24 Q. And it says "Over 50 percent of men smokers
25 start smoking fairly regularly before the age of 18

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1 and virtually all start by the age of 25." Do you
2 see that?

3 A. Uh-huh.

4 Q. While you were employed in the market research
5 department, do you recall knowing that this data
6 existed inside of R.J. Reynolds, the data with regard
7 to 50 percent -- over 50 percent of men smokers
8 starting fairly regularly before the age of 18?

9 A. I don't recall seeing that statistic when I was
10 at -- when I came to Reynolds.

11 Q. Did you recall seeing it at any -- at any time
12 while you were at Reynolds?

13 A. At some time, I became aware of that, yes.

14 Q. How did you become aware of it?

15 A. I don't even recall.

16 Q. Did you see it written anywhere?

17 A. Yes, I did see it written somewhere.

18 Q. And do you recall where that would have been?

19 A. It was probably used in a document my group
20 created.

21 Q. Do you recall what document that would have
22 been?

23 A. Yes.

24 Q. What?

25 A. It would have been called the young adult smoker

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1 analysis, I believe.

2 Q. When was that done?

3 A. Mid-'80s somewhere.

4 Q. And what was the purpose of that being created?

5 A. The purpose of that document was to give the
6 company a better understanding of the -- of the
7 nature of the young adult market. It presented
8 statistics dealing with RJR's performance and
9 competitive performance among the 18-to-24-year-old
10 smoker group.

11 Q. Now this document, Plaintiffs' Exhibit 1030, if
12 you will turn to Table I, which is at Bates number
13 50122 1314.

14 MR. TAYLOR: What were the Bates numbers,
15 the last couple Bates numbers?

16 MR. FINZEN: 1314.

17 MR. TAYLOR: Go back a couple of pages.
18 That's 12, 13, 14.

19 A. Got it.

20 Q. This is a page labeled "TABLE I, AGE STARTED
21 SMOKING." Do you see that?

22 A. Yes, I see that.

23 Q. And under -- under "MALES," there is a percent
24 at age 12 and then 13 and so on in the left-hand
25 column?

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1 A. Yes.

2 Q. And then a cumulative total --

3 A. Yes.

4 Q. -- in the column next to that? And the same for
5 females; correct?

6 A. That's correct.

7 Q. The cumulative column, if you get to age 17,
8 shows the 54 percent that's reported on the first
9 page of the memo; correct?

10 A. Correct.

11 Q. And --

12 And then at age 18 that goes to 68.9 percent;
13 correct?

14 A. Correct.

15 Q. Is that consistent with your knowledge of the
16 age-started-smoking information that was available
17 while you were employed at R.J. Reynolds?

18 MS. BIXENSTINE: Objection.

19 A. What do you mean by "consistent with"?

20 Q. Is that consistent with your understanding of
21 the information inside R.J. Reynolds with regard to
22 the age at which males and females started smoking?

23 A. The extent of my knowledge at this point in time
24 is that a large number of people had started smoking
25 before age 18.

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1 Q. And specifically, are you aware of any
2 information inside R.J. Reynolds that was
3 inconsistent with this data as to the --

4 MS. BIXENSTINE: Objection.

5 Q. -- age that individuals started smoking?

6 MS. BIXENSTINE: Objection, vague. What do
7 you mean by "inside R.J. Reynolds"? Do you mean data
8 from HEW that Reynolds had inside its company? What
9 do you mean?

10 MR. FINZEN: If he doesn't understand, he
11 can tell me he doesn't understand. "Objection" is
12 all you need to say.

13 MS. BIXENSTINE: Objection, vague.

14 A. Then can you make it more specific?

15 Q. Any information at any time while you were
16 employed at R.J. Reynolds that was inconsistent with
17 this data regarding the age at which people start to
18 smoke, are you familiar with any?

19 MR. TAYLOR: Of which he has knowledge --

20 MR. FINZEN: Right.

21 MR. TAYLOR: -- as he sits here today, --

22 MR. FINZEN: Yes.

23 MR. TAYLOR: -- on May the 8th, 1997?

24 MR. FINZEN: Correct.

25 A. I am not aware of any data that is inconsistent

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1 with what this shows.

2 Q. Based upon information that RJR had gathered
3 over the years, by at least 1984 RJR, Reynolds, knew
4 that the renewal of the cigarette market stemmed
5 almost entirely from 18-year-old smokers; isn't that
6 correct?

7 MS. BIXENSTINE: Objection as to what RJR
8 knew.

9 A. I believe there was a statistical basis for
10 making that. As I don't know what everybody in RJR
11 knew, but there was a statistical basis for saying
12 that. In fact, the numbers you've showed me also
13 make a statistical basis for that statement.

14 Q. So that there was data within RJR that showed
15 that the renewal of the cigarette market stemmed
16 almost entirely from 18-year-old smokers?

17 A. As far as I'm concerned, the document you're
18 showing me is a basis for making such a statement.

19 Q. Okay. Was there also documentation available by
20 at least 1984 inside RJR that showed that brand
21 loyalty far outweighed the tendency of people to
22 switch with age?

23 MS. BIXENSTINE: Objection to the form.

24 A. Brand loyalty is very high in the cigarette
25 business. I can't -- it's hard to remember that far

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1 back as to what specific data was and was not
2 available and whether it had that interpretation.
3 I'm willing to say that brand loyalty is very high in
4 the cigarette business.

5 Q. Was there also data by at least 1984 inside R.J.
6 Reynolds which showed that the annual influx of
7 18-year-old smokers provided effortless momentum for
8 successful first brands?

9 MS. BIXENSTINE: Objection to the form.

10 A. I believe there was data that would underlie
11 such a statement.

12 Q. Was there also data by at least 1984 that showed
13 for -- that for Marlboro, as of 1984 this meant for
14 them a growth of approximately eight-tenths of a
15 share point per year due to 18-year-old smokers
16 alone?

17 A. I -- I don't know about the specific numbers.
18 It sounds to me like you're quoting from a report,
19 and I'd be glad to look at the report and comment on
20 the report itself.

21 Q. Do you have any independent knowledge as you sit
22 here today whether as of 1984 at least that data was
23 known to R.J. Reynolds?

24 A. I believe something similar to what you are
25 reporting was -- was known to Reynolds. I have no

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1 comment on the specific numbers you're -- you're --
2 you're giving me.

3 Q. Was it also known by 1984 inside R.J. Reynolds
4 from data that they had gathered over time that
5 brands which don't attract their fair share of
6 younger adult smokers face an uphill battle?

7 MS. BIXENSTINE: Objection to the form of
8 the question.

9 A. Yes, I agree with that statement.

10 Q. And that brands that don't attract their fair
11 share of the younger adult smokers have to achieve
12 net switching gains each year merely to hold their
13 share of market? Was that also known?

14 A. That would be a reasonable conclusion, yes.

15 Q. And that the growth in volume that had been seen
16 by Marlboro and which we looked at in terms of the
17 share of smokers in the 14-to-17-year age-group could
18 be tracked entirely to movement of people into that
19 18-year-old age-group?

20 MS. BIXENSTINE: Objection to the form.

21 A. Could you be -- could you repeat it because it
22 was more specific than I --

23 Q. Sure. That basically the increase in volume
24 that Marlboro had -- had generated or was generating
25 that we've --

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1 A. Uh-huh.

2 Q. -- looked at in some of the other documents was
3 attributed entirely to the movement of 18-year-olds
4 into the market, 18-year-olds which they had
5 previously attracted?

6 A. I don't know when they attracted it, but yes,
7 their share of 18-year-olds plus the number of bodies
8 in 18-year-olds would account for their gain in the
9 share of smokers. I don't know about volume, sir.

10 Q. Well let's talk about the share of volume.
11 Volume is based on a different analysis than share of
12 smokers; correct?

13 A. That's correct.

14 Q. Because volume takes into consideration not only
15 the number of smokers but how many cigarettes they
16 are smoking?

17 A. That's correct.

18 Q. And it is true, is it not, based upon RJR data
19 that the volume of smoking tends to increase with
20 age?

21 A. I believe that is --

22 MS. BIXENSTINE: Objection --

23 A. -- correct.

24 MS. BIXENSTINE: -- to the form.

25 Q. Such that as 18-year-old smokers age, they tend

1 to smoke more volume of cigarettes each year?

2 A. Yes.

3 Q. So that if there are a larger share of a
4 particular brand attracting 18-year-old smokers, over
5 time the volume growth of that brand will increase
6 solely as a result of having more smokers at the age
7 of 18?

8 MS. BIXENSTINE: Objection to the form.

9 A. If the person remains smoking that same brand,
10 that is true, yes.

11 Q. Based on the increase in consumption with age?

12 A. That would be true.

13 Q. And much of the information with regard to the
14 success of brands due to the influx of smokers at age
15 18 is part of the report that you referenced earlier
16 that your group put together on the trends of younger
17 adult smokers?

18 A. I believe so, sir.

19 MR. FINZEN: Mark this, please.

20 (Plaintiffs' Exhibit 1031 was marked
21 for identification.)

22 BY MR. FINZEN:

23 Q. Mr. Nordine, I'm going to hand you now what's
24 been marked as Plaintiffs' Exhibit 1031, Bates stamp
25 numbered 50192 8462 through 8550.

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1 A. Yes.

2 Q. And I'd ask you to look at that document and
3 tell me whether you're familiar with it.

4 A. Yes, I'm familiar with it.

5 Q. Do you need some time to review it or --

6 A. That's why I winced a minute ago. It's a pretty
7 thick document to read.

8 Q. I want to ask you --

9 A. Can you direct me to a particular point of it
10 that I might review quickly?

11 Q. Well I'm going to be asking you questions about
12 a number of different points, so if you haven't seen
13 it and would like to review it, we can take some time
14 to --

15 A. I have seen the thing, but it's been -- well
16 it's been 13 years ago, so let's --

17 Q. Let's take some time off the record then to
18 allow you to review it.

19 A. Okay.

20 THE REPORTER: Off the record, please.

21 (Discussion off the record.)

22 BY MR. FINZEN:

23 Q. Mr. Nordine, off the record you've had a chance
24 to page through what's been marked as Plaintiffs'
25 Exhibit 1031, is it?

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1 MR. TAYLOR: Yes, sir.

2 A. Yes.

3 Q. And have you been able to at least look at it
4 enough to satisfy yourself that this is a document
5 that you have seen before?

6 A. Yes.

7 Q. You're familiar with this document, which is
8 entitled "STRATEGIC RESEARCH REPORT, YOUNGER ADULT
9 SMOKERS: STRATEGIES AND OPPORTUNITIES," as being a
10 document that was generated out of your department
11 when you were at R.J. Reynolds?

12 A. Yes.

13 Q. And on the cover page, the upper right, it says
14 "FROM: Diane S. Burrows." Do you see that?

15 A. Yes.

16 Q. It's dated above her name February 29, 1984.

17 Who is Diane Burrows?

18 A. She was a woman that worked for me.

19 Q. And what was her job position?

20 A. I forget her exact title. I believe it would be
21 marketing research manager would be her title, but
22 that's -- that's -- I'm not sure of that.

23 Q. Did she produce this document with the
24 assistance of others in the department?

25 A. Yes.

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- 1 Q. And do you know who the other people were who
2 worked with her in the production of this document?
- 3 A. People from within RJR?
- 4 Q. Yes.
- 5 A. Yes, I do know.
- 6 Q. Who would they have been?
- 7 A. I was involved in it as well as a woman named
8 Joan Whaley.
- 9 Q. And what was -- Whaley, is it?
- 10 A. Whaley.
- 11 Q. What was Joan Whaley's position with the
12 company?
- 13 A. She was a consultant.
- 14 Q. By whom was she employed?
- 15 A. She was -- she was employed by the department.
- 16 Q. But as a consultant, did she work for another
17 company?
- 18 A. I do not believe so, no.
- 19 Q. She was an independent employed by RJR; is that
20 what you're saying?
- 21 A. Yes.
- 22 Q. What was her area of expertise?
- 23 A. Joan had worked for the company in the past.
- 24 Q. In what area?
- 25 A. I'm not sure. I don't know.

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1 Q. Did she have any unique qualifications based
2 upon her prior employment with RJR to be involved in
3 this project?

4 A. Not particularly this project, no.

5 Q. Do you know why she was selected to work with
6 you and Ms. Burrows on this project?

7 A. Because she had time available and -- and the
8 department thought it would be -- that we could use
9 the help.

10 Q. Anyone else that you can recall working on this
11 project either inside or outside of R.J. Reynolds
12 other than the names you've mentioned?

13 A. No.

14 Q. And the cover page anyway says this is addressed
15 to three individuals: Mr. G. H. Long, Mr. M. L.
16 Orlowsky and Mr. H. J. Lees. Do you see that?

17 A. Yes.

18 Q. Who was Mr. Long?

19 A. The name was Gerry Long. He was an executive of
20 the company.

21 Q. And what was his area of management?

22 A. Gee, I don't -- he might have -- I'm not sure if
23 he -- he might have been the CEO or he might have
24 been the chief operating officer. He was an
25 executive. I don't -- pretty broad responsibilities,

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- 1 as far as I know.
- 2 Q. Okay. What about Mr. Orlowsky?
- 3 A. I -- I think that Marty Orlowsky was head of
- 4 marketing department, I believe, is his -- what his
- 5 job was.
- 6 Q. And would that marketing department have
- 7 included market research as part of the group under
- 8 Mr. Orlowsky?
- 9 A. I'm not sure.
- 10 Q. What about Mr. Lees? What was his position with
- 11 the company?
- 12 A. He was in marketing. I don't know what his
- 13 specific responsibilities were at that time.
- 14 Q. Again was he somebody within your area, in -- in
- 15 the strategic research area?
- 16 A. No, he was not.
- 17 Q. The copy list at the bottom of the page has a
- 18 fairly long list of names. Do you recognize the --
- 19 the names of some of those individuals?
- 20 A. Yes.
- 21 Q. Who is Mr. Hall?
- 22 A. I believe he was head of the marketing research
- 23 department at that time.
- 24 Q. And Ms. MacKinnon?
- 25 A. She worked in marketing.

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- 1 Q. Do you know what her position was in marketing?
- 2 A. No, I don't know her title.
- 3 Q. What about Mr. McKenna?
- 4 A. He was also in marketing.
- 5 Q. And Mr. Winebrenner?
- 6 A. He was in marketing.
- 7 Q. Mr. Shostak?
- 8 A. Shostak.
- 9 Q. Shostak.
- 10 A. In marketing.
- 11 Q. And Mr. Fackelman?
- 12 A. He was in marketing research. I believe he was
- 13 my boss at the time.
- 14 Q. At that time?
- 15 A. I believe so, yes.
- 16 Q. Ms. Monahan?
- 17 A. She was in marketing research.
- 18 Q. Mr. Moore?
- 19 A. Marketing research.
- 20 Q. Dr. Gemma?
- 21 A. Marketing research.
- 22 Q. Mr. Novak?
- 23 A. He was in marketing research. He might have
- 24 been my boss. I'm not sure who was my boss at that
- 25 particular time.

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- 1 Q. Both of them were at some point in time?
- 2 A. They were at one point in time both of my
- 3 bosses.
- 4 Q. Mr. Baroody?
- 5 A. He was, I believe, in the promotions
- 6 department.
- 7 Q. Mr. Pearson?
- 8 A. Advertising, I think.
- 9 Q. And the list of blind-copied people, A. M.
- 10 Curry, do you know who that was?
- 11 A. I -- he was somebody who worked in the marketing
- 12 department.
- 13 Q. Mr. -- or I'm sorry, J. -- G. J. Totterdale?
- 14 A. He worked in marketing research.
- 15 Q. R. A. Lloyd?
- 16 A. I believe he worked in R&D.
- 17 Q. T. J. Rucker?
- 18 A. The law department.
- 19 Q. W. K. Neher?
- 20 A. Marketing, I think.
- 21 Q. G. G. Bethea?
- 22 A. She worked in marketing research, I believe.
- 23 Q. R. J. Harden?
- 24 A. Marketing research.
- 25 Q. And J. Whaley?

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1 A. That was the name who worked on the study with
2 us that I mentioned earlier.

3 Q. Okay. That was the -- one of the people who
4 worked that was the consultant?

5 A. That's correct.

6 Q. The reference at the top of this document to
7 "RJR SECRET" and then a number with a blank space
8 where "386" is written in and then a "By" where
9 there's some initials, are you familiar with that
10 categorization of a document in 1984?

11 A. Vaguely so now. I was familiar then.

12 Q. Do you know what that -- what's your
13 understanding of what that means?

14 A. It means that we would not want our competitors
15 to see our analysis, is my recollection of it, and
16 that this should be a limited distribution, work
17 within the company.

18 Q. Does the number 386 have any meaning to you?

19 A. No.

20 Q. Do you know how numbers were selected for
21 inclusion in that part of the caption for "RJR
22 SECRET"?

23 A. No, I do not.

24 Q. Do you know whose handwriting that is in the
25 "By" column there?

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- 1 A. No, I don't know that either.
- 2 Q. Now the first page after the title page is
- 3 listed "MDD ABSTRACT FORM."
- 4 A. Yes.
- 5 Q. Do you know what that refers to, "MDD"?
- 6 A. What "MDD" stands for?
- 7 Q. Yes.
- 8 A. Marketing development department.
- 9 Q. Okay. And is this a document then that was done
- 10 by the marketing development department?
- 11 A. Yeah, the marketing development department was
- 12 another name for the marketing research department.
- 13 Q. Okay. And you're listed on that abstract form
- 14 as the section manager?
- 15 A. Yes.
- 16 Q. Do you know the date that this project was
- 17 started?
- 18 A. Not specifically I don't, no.
- 19 Q. Do you know approximately how long it took to
- 20 complete?
- 21 A. My estimate would be four months, five months,
- 22 something of this nature.
- 23 Q. And when this report was finalized and sent to
- 24 the individuals we have reviewed who are named on the
- 25 first page, did you believe that the data within the

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1 report was correct and accurate?

2 A. I believe so.

3 Q. And that comes from your involvement in the work
4 itself, that knowledge or that belief?

5 A. Yeah, that, and I had a great deal of confidence
6 in the individuals doing it as well.

7 Q. And during the course of the time that it was
8 underway, you had a chance to see that work in
9 progress?

10 A. Yes.

11 Q. And to review it?

12 A. Much -- most of it, yes.

13 Q. And --

14 And as it was done and assembled, you believe it
15 to be accurate?

16 A. I do.

17 Q. If you will turn to the summary, management
18 summary, which is the fourth page in, Bates numbered
19 last four numbers 8465, --

20 A. Yes.

21 Q. -- the reference in -- starting in the --
22 approximately the middle of the page, "THE IMPORTANCE
23 OF YOUNGER ADULT SMOKERS."

24 A. Underlined part you're talking about.

25 Q. Yes.

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1 A. Yes.

2 Q. I'm looking now under that heading. The first
3 sentence of the part under that says "Younger adult
4 smokers have been the critical factor in the growth
5 and decline of every major brand and company over the
6 last 50 years." Do you see that?

7 A. I see that.

8 Q. Do you believe that to be a correct statement at
9 the time that it was written?

10 A. Yes.

11 Q. Do you know the information upon which that
12 statement is based in this report?

13 A. I am familiar with it. I am sure that it is in
14 this report in fact.

15 Q. And it was information that was gathered by the
16 team from within R.J. Reynolds?

17 A. It would be on R.J. Reynolds' information, yes.
18 There was some, I think, reference to HEW studies
19 perhaps too.

20 Q. And the bullet points under that first heading,
21 there are two in number, the first of which says "The
22 renewal of the market stems almost entirely from
23 18-year-old smokers." Do you see that?

24 A. I see that.

25 Q. When the phrase "the renewal of the market" is

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1 used, it refers to the broad market for cigarette
2 smokers?

3 A. That refers to the market of 18 and older
4 smokers. 18 and older is the market, and it refers
5 to the fact that there is always a changing age
6 definition over time as people age.

7 Q. Well the statement itself, sir, says "The
8 renewal of the market stems ... from 18-year-old
9 smokers"; correct? That's what it says?

10 A. That's what -- yes, that's right.

11 Q. And if I understand your answer, what you're
12 saying is the market, as it's referred to there, is
13 the renewal of the market of 18 and beyond?

14 A. That is the market that is referred to, yes.

15 Q. I got you. All right.

16 And the second bullet point says that "... brand
17 loyalty of 18-year-old smokers far outweighs any
18 tendency to switch with age." Do you see that?

19 A. That's correct.

20 Q. Do you believe that statement was also correct
21 when it was written?

22 A. Substantially, yes.

23 Q. And again, that was based upon information that
24 the team gathered from within R.J. Reynolds?

25 MS. BIXENSTINE: Objection.

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1 A. Yes.

2 Q. The first sentence that appears after that
3 refers to "... the ... influx of 18-year-old smokers
4 provides an effortless momentum to successful 'first
5 brands,'" and that's in quotes. Do you see that?

6 A. I see that.

7 Q. There is a -- a reference then with a -- a
8 asterisk to the bottom of the page.

9 A. That's correct.

10 Q. Saying "... those which appeal to 18-year-old
11 smokers rather than switchers ages 19 to 24." What
12 is -- what exactly does that refer to? Does that
13 refer to the, quote, "first brands," unquote?

14 A. I believe what that refers to is that in the
15 cigarette market there's people that have a usual
16 brand of cigarettes, and that characteristic is one
17 they will choose one brand and stay with it for a
18 long time. A switcher is a person who changes that
19 definition of usual brand to something else. So
20 among people that are 18, 19, 20 or whatever it is,
21 some of them are adopting their very first brand.
22 They may have smoked or may not have before that
23 time, but at some stage they adopt a first brand as
24 the regular brand they stay with. That is referring
25 to people who are adopting a usual brand --

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1 Q. So --

2 A. -- for the first time rather than making a

3 change in adoption at some point later on.

4 Q. And if I understand the time frame of what's

5 being written, the asterisk says the first brand

6 adoption you're talking about here is those which

7 are -- appeal to are adopted by 18-year-old smokers;

8 correct?

9 A. That's what the sentence says, but it's adopt --

10 adopting the first at that approximate age, I think.

11 Q. And --

12 A. And I realize it's right as you read it.

13 Q. And in fact, a large share of smokers who become

14 smokers before age 18 adopt a first brand before age

15 18; isn't that correct?

16 A. I don't know that for myself, but statistics say

17 so from outside sources. I've never studied that

18 myself.

19 Q. Well at least if you -- if you look down to the

20 last paragraph on this page, the second sentence,

21 referring to Marlboro and Newport in the first

22 sentence, says "All of their volume growth can be

23 traced to younger adult smokers and the movement of

24 the 18-year-olds which they have previously attracted

25 into older age brackets, where they pay a consumption

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1 dividend of up to 30 percent." Do you see that?

2 A. I see that, yes.

3 Q. That information at the time that it was written
4 you believe to be true and accurate?

5 A. Yes, I believe that to be true and accurate.

6 Q. And that it came from information that was
7 within R.J. Reynolds?

8 MS. BIXENSTINE: Objection.

9 A. It came from information presented in this
10 report.

11 Q. And what that says is that the 18-year-olds
12 which provided the volume growth for Marlboro were
13 18-year-old smokers which they had attracted before
14 they were 18; correct?

15 A. I don't believe it refers to when they attracted
16 them. It refers -- it refers to the fact that they
17 smoked them when they were 18.

18 Q. Well it says movement of 18-year-olds which they
19 have previously attracted, previous to 18; correct?

20 A. It --

21 MS. BIXENSTINE: Objection.

22 Q. Is that what the language means, sir?

23 A. Well let me read it more carefully here. I'm
24 not sure what the language means at this stage of the
25 game.

1 What that -- let me -- if you'll permit me to
2 put it in my own words, I will tell you what I think
3 that really refers to.

4 Q. Well --

5 MR. TAYLOR: He's asked you to do that. Go
6 ahead and do that.

7 MR. FINZEN: Wait a minute.

8 Q. Let me just ask you first. My question was: --

9 MR. TAYLOR: You're entitled to answer his
10 question any way you want to.

11 Q. -- And what that says is that the 18-year-olds
12 which provided the volume growth for Marlboro were
13 18-year-old smokers which they had attracted before
14 they were 18; correct?

15 A. That is not what --

16 MS. BIXENSTINE: Objection.

17 A. -- that means in my opinion.

18 THE REPORTER: Off the record, please.

19 (Discussion off the record.)

20 BY MR. FINZEN:

21 Q. If you will turn to --

22 A. Could I finish responding to the question that
23 you laid out for me before?

24 Q. No, you answered my question, sir.

25 MR. TAYLOR: If you haven't answered your

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1 question to your satisfaction, Mr. Nordine, you
2 answer as much as you want.

3 A. I would like to say what the sentence clearly
4 says to me is that the movement of the 18-year-old
5 smokers which they have previously attracted into
6 older age-groups clearly means, in my mind, somebody
7 that was an 18-year-old, smoked it in -- five years
8 ago, is now 23 years old and he is therefore
9 producing more volume. So it does not refer to
10 anything regarding underage smoking, as I believe
11 your question implied. We can go on to the next
12 now --

13 Q. Move to strike.

14 A. -- if you're happy with that.

15 Q. Move to strike as nonresponsive.

16 If you would turn to page Roman iii at the
17 bottom, which is Bates numbered 8467, at the top of
18 the page there is a Roman -- or a Arabic number 1 in
19 a box. Do you see that?

20 A. I see that.

21 Q. And it says "Younger adult smokers are critical
22 to RJR's long term performance and profitability" in
23 the first sentence. Do you see that?

24 A. I see that.

25 Q. Was that true at the time that this was

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1 written?

2 A. Yes, I believe it was.

3 Q. And the recommendation that follows that is
4 that "... RJR should make a substantial long term
5 commitment of manpower and money dedicated to younger
6 adult smoker programs. An unusually strong
7 commitment from Executive Management will be
8 necessary." Do you see that?

9 A. I see that, yes.

10 Q. Following the issuance of this report, did RJR
11 make a substantial long-term commitment of manpower
12 and money dedicated to younger adult smoker
13 programs?

14 A. Not in my opinion. They made some --

15 Q. Is that be --

16 A. -- commitment. I wouldn't call it substantial
17 long-term commitment. I would say some commitment,
18 yes.

19 Q. So in that regard, it's your testimony the
20 company did not follow your recommendations?

21 A. Not to anywhere near the degree to which this
22 recommendation was made.

23 Q. And was there an unusually strong commitment
24 from executive management for the younger adult
25 smoker program development?

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1 A. I -- I would say that it was not unusual. It
2 was -- there was a commitment made, but it was not
3 what I would consider the word "unusual" to be.

4 Q. Was it the recommendation of your group that RJR
5 should move from a switching strategy to a
6 first-brand strategy for smokers 18 years old?

7 A. I don't recall what our recommendation was.

8 Q. You don't recall that as a recommendation of the
9 report?

10 A. I believe the recommendation of the reports
11 would stand on their own, and I don't remember
12 specifically what they were.

13 Q. If that is a recommendation contained within
14 this -- this report, you believe that that is a -- a
15 fair assessment of what was your understanding or
16 your belief as to what RJR should do at that time?

17 MS. BIXENSTINE: Objection as to the form.
18 Why don't you point him to the part of the document.

19 A. I have no comment until you show me what -- you
20 know, what the recommendations were.

21 Q. So you have no independent knowledge of that?

22 A. Not at this stage of the game, I don't, no.

23 Q. The third bullet recommendation on Roman numeral
24 iii --

25 A. Yes.

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1 Q. -- says that "Because of the sensitivity of the
2 younger adult smoker market, brand
3 development/management should encompass all aspects
4 of the marketing mix and maintain a long term,
5 single-minded focus to all elements -- product,
6 advertising, name, packaging, media, promotion, and
7 distribution." Do you see that?

8 A. I see that, yes.

9 Q. And again I will ask you whether you believe
10 that that is a accurate representation of what you
11 believed RJR should do as of the time that this
12 report was written.

13 A. Yes, that was our recommendation.

14 Q. And was that recommendation acted upon by the
15 company?

16 A. They created brand marketing teams, and if you
17 call that a reflection of this. I don't think that
18 it was done because our -- because of our
19 recommendations, yet it did things which were
20 consistent with it, even though I don't think this is
21 the -- the driving force of their action.

22 Q. Were there specific marketing programs developed
23 to address the younger adult smoker market following
24 your -- the issuance of your report?

25 A. I don't recall what the company did following

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1 '84 or 1985 or 1986. I don't -- don't know that
2 there was any immediate reaction. I don't recall
3 whether there was or whether there wasn't at that
4 particular time.

5 Q. Well the -- the first recommendation was that
6 the company make a long-term commitment. Do you
7 recall whether over the long term there were specific
8 marketing programs that were developed to market to
9 the younger adult smokers?

10 A. I don't -- I don't -- hmm. You know, I was not
11 privy to the meetings where people make such
12 decisions, and while the study was well received by a
13 lot of people, I don't have firsthand knowledge of
14 exactly how this particular study was used by
15 anyone.

16 Q. Were you involved in the follow-up of this study
17 with any of the areas within RJR?

18 A. I was not involved in developing their programs
19 if they were basing them on this. I was free to
20 ask -- they were free to ask me questions whenever
21 they did, and if they were coming from this, I would
22 be happy to answer them for them or to refer them to
23 Diane Burrows, who drafted the report, but we did not
24 form a team with anybody to be involved in what they
25 did.

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1 Q. The second boxed recommendation on Roman numeral
2 iii refers to "RJR" seek -- "should seek to better
3 understand and capitalize on the factors/strategies
4 which have succeeded for younger adult brands in the
5 past." Do you see that?

6 A. Yes, I see that.

7 Q. It then goes on to refer to RJR's processes
8 being better attuned to switching than to first-brand
9 strategies. Do you see that?

10 A. I see that.

11 Q. Was the tenor of the recommendation, as you
12 understood it from this report, that R.J. Reynolds
13 should switch to a strategy for first-brand
14 development for smokers at age 18?

15 A. No, I don't think we should have switched what
16 we were doing, that we should bear in mind that --
17 that we should bear in mind that -- hmm. I'm having
18 difficulty formulating what it was that we were doing
19 and what it was I thought we should do with this.

20 Q. Wasn't this a recommendation of strongly moving
21 towards a first-brand strategy rather than a
22 switching strategy for younger adult smokers?

23 A. This -- this report is a vehicle for saying
24 that -- that RJR should put a great deal of emphasis
25 on meeting the needs of younger adult smokers, and

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1 even though they are a relatively small group in
2 terms of their absolute magnitude and numbers, the
3 company should not overly emphasize the fact that
4 some very large fraction of smokers are 25 and
5 older. And I -- as near as I can come at this stage
6 in time, that was the kind of thought that was
7 getting at number two that you'd asked me about, that
8 Reynolds put a great deal of emphasis on how big a
9 group was instead of understanding the dynamic nature
10 of the market and the fact that people choose a brand
11 and stay with it for a very long time.

12 Now that's a very abstract way of answering your
13 question and maybe it doesn't answer it, but that is
14 the concept I think that was trying to be dealt with
15 in -- in statement number two, was --

16 Q. Is --

17 Is that another more detailed way of saying that
18 a first-brand strategy within RJR was part at least
19 of what was being recommended by this report?

20 A. A first usual brand type of emphasis, yes.

21 Q. Now in the other two bullet points above in --
22 in Arabic number 1 recommendation, the middle bullet
23 point refers to RJR making resources available to
24 develop/improve its capabilities to thoroughly
25 identify and track demographics, values, wants, media

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1 effectiveness and brand performance within sectors of
2 the younger adult smoker population.

3 A. Uh-huh.

4 Q. Do you see that?

5 A. I see that.

6 Q. It then references that "These tools will be
7 critical to the development and implementation of
8 effective programs addressing younger adult
9 smokers."

10 A. Uh-huh.

11 Q. That statement, I -- I take it, as with your
12 others, you believe was a -- an accurate and a
13 correct statement of what RJR should do based upon
14 the report you had written?

15 A. That was our recommendation, yes, sir.

16 Q. And did the tracking and demographics that you
17 referred to for the performance within sectors of the
18 younger adult smoker population include sectors of
19 younger adults that were under the age of 18?

20 MS. BIXENSTINE: Objection.

21 A. No. We didn't recommend anything for under 18.

22 Q. Was any part of that recommendation intended to
23 say that RJR resources should do a better job of
24 tracking the smoking habits of smokers under the age
25 of 18?

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1 MS. BIXENSTINE: Objection, asked and
2 answered.

3 A. No. It speaks to younger adult smokers pretty
4 clearly what it speaks to, and I think it stands on
5 its own.

6 Q. But at this time, you were -- you were aware
7 that at least through NFO data RJR was tracking the
8 demographics of smokers under the age of 18;
9 correct?

10 A. I am not even sure --

11 MS. BIXENSTINE: Objection.

12 A. -- we were still doing at 1984. I don't know
13 what was done after the reports you showed me. I
14 have no idea.

15 Q. When's the last time you recall seeing any NFO
16 data relating to smokers under the age of 18?

17 A. I can't be specific, but it was -- it could well
18 have been earlier than 1984 was the last time I saw
19 anything. I don't know. I don't recall.

20 Q. While you were at RJR, did the company stop
21 tracking through NFO the habits or customs of smokers
22 under the age of 18?

23 A. I am not sure whether they did or not. I
24 suspect they did, but I don't know for sure.

25 Q. And what makes you suspect that they did?

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1 A. I don't know. Somebody might have mentioned to
2 me; somebody might not have. That -- I would not be
3 surprised if somebody told me that is what I mean to
4 say.

5 Q. Would you be surprised if someone told you that
6 they did continue to track it?

7 A. I don't -- I really don't know.

8 MR. TAYLOR: Can I suggest another ten
9 minutes or so and then we'll break? That will, you
10 know --

11 MR. FINZEN: Sure.

12 MR. TAYLOR: I mean, not right this second,
13 but I just say another ten minutes, you know,
14 whenever your next --

15 MR. FINZEN: Sure.

16 MR. TAYLOR: I realize you could probably
17 be here a month with this thing, but I'm just kind of
18 charting it out. If we take one about 2:45 --

19 MR. FINZEN: All right.

20 MR. TAYLOR: -- or maybe even now, you
21 know, that gives us a little couple of breaks.

22 MR. FINZEN: All right.

23 MR. TAYLOR: There's a lot of testimony,
24 and I get charged for the colloquy.

25 BY MR. FINZEN:

- 1 Q. Turn, if you would, sir, to page three of the
2 report and Section I, which is at Bates number 8472.
3 A. Okay.
4 Q. Do you see the -- the first sentence at the top
5 of that page?
6 A. The one that begins with "Furthermore"?
7 Q. Yes.
8 A. Okay, I see it.
9 Q. It says "Furthermore, entering 18-year-old
10 smokers account for all of Marlboro's strength among
11 total 18 to 24" -- "18 to 24," period. Do you see
12 that?
13 A. I see the sentence, yes.
14 Q. And if you compare that with the language in the
15 management summary at the bottom of little page Roman
16 numeral i that we looked at earlier that says "the
17 movement of the 18-year-olds which they have
18 previously attracted," do you see that?
19 A. Yeah. Let me see what the asterisk is again
20 first, though.
21 Yes, I see what you're referring to.
22 Q. If you look at that Roman numeral i and then
23 look at the sentence in the top of page three --
24 A. Uh-huh.
25 Q. -- it becomes fairly clear, does it not, sir,

1 that the sentence at the top of page three said that
2 the data you had showed that the smokers who entered
3 as 18-year-old Marlboro smokers account for all of
4 Marlboro's strength in the 18-to-24-year-old
5 age-group?

6 A. I believe that's what the sentence says, exactly
7 that.

8 Q. And so when we looked at earlier the -- this --
9 on page Roman numeral small i that all of the volume
10 growth can be traced to the movement of those
11 18-year-olds which they have previously attracted
12 means people who were Marlboro smokers when they
13 became 18?

14 MS. BIXENSTINE: Objection.

15 A. I feel that you're getting -- you are asking me
16 to agree with a -- a logic rather than asking me a
17 question, and there has been too many references from
18 here to here to here and I'm not sure where you're
19 leading me with -- with all the connections that
20 you've made.

21 Q. Well logically, this sentence would indicate
22 that the first reference to "18-year-olds which they
23 have previously attracted" means the data you had to
24 make that statement showed that these were
25 18-year-old smokers who had been Marlboro smokers

1 before the age of 18?

2 A. No, that doesn't -- isn't what it says. You
3 know, we talked about this once before. That
4 asterisk refers to the fact that somebody captures a
5 Marlboro smoker in -- who is 18 in 1980. Ten years
6 later, that person is now 28 years old, smoking more
7 cigarettes per day than he did when he was there, and
8 those are gains as a result of increased volume and
9 loyalty. They do not refer to underage smokers, and
10 it doesn't do it here and it doesn't do it in this
11 section either.

12 Q. RJR had data at the time you prepared this
13 report, did it not, that showed that most Marlboro
14 smokers chose Marlboro as a usual brand before the
15 age of 18?

16 A. I don't know. I told you I don't know when they
17 stopped -- if or when they stopped using NFO or not.
18 I don't know.

19 Q. At some point in time, whether it was before
20 this date or not, you were aware that RJR had data
21 that showed that most Marlboro smokers adopted
22 Marlboro as a usual brand before the age of 18;
23 correct?

24 A. I had information that said Marlboro had a very
25 large share among 13- to 17-year-olds, and we've

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1 already talked about that. Or was it 14 to 17, I
2 believe it was? We've talked about that, and yes, we
3 had data in hand that they had a large share of that
4 group.

5 MR. TAYLOR: You're turning pages. Is this
6 a good time to walk around the building or
7 something?

8 MR. FINZEN: A couple of more --

9 MR. TAYLOR: Yes, sir.

10 MR. FINZEN: -- minutes here and I think
11 I'll be at a --

12 MR. TAYLOR: Okay.

13 MR. FINZEN: Maybe this is a good spot.
14 Why don't we take a break here.

15 THE REPORTER: Off the record, please.

16 (Recess taken.)

17 BY MR. FINZEN:

18 Q. Mr. Nordine, I want to turn for one moment to --
19 return for one moment to the question I asked you
20 earlier about first brand, whether this document was
21 recommending a first-brand strategy for RJR.

22 A. Okay.

23 Q. Do you recall me asking you that?

24 A. Yes.

25 Q. I'd like to have you turn, if you would, please,

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1 to page seven of the report, at Bates number page
2 8476.

3 A. Yes.

4 Q. And that's under the page titled importance --
5 "THE IMPORTANCE OF YOUNGER ADULT SMOKERS, SUMMARY."

6 A. Yes.

7 Q. Do you see that?

8 A. Uh-huh.

9 Q. Roman -- I'm sorry.

10 Arabic 2 under that summary page reads "A 'first
11 brand' strategy has significant share advantages,"
12 and then it goes on to discuss several of those
13 advantages.

14 A. Yes.

15 Q. Does that in any way help refresh your
16 recollection that -- that what was being recommended
17 here was that RJR adopt a first-brand strategy for
18 its marketing?

19 A. Well let me read this over, what the dots say
20 under here, the items underneath it.

21 Yes, this -- I've read this, and I -- I don't
22 believe I've said anything that would be in
23 opposition to this.

24 Q. I'm not suggesting, sir, that you have.

25 A. Okay.

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1 Q. I'm merely asking since you had asked me to
2 point you to something that discussed first brand,
3 I'm wondering if this helps you refresh your
4 recollection that that was one of the key
5 recommendations that came from this report.

6 A. Yes, okay, it has helped refresh my memory of
7 that idea.

8 Q. And that was one of the significant strategies
9 that the report was urging for RJR?

10 A. Well let me review it then, what we said.

11 I don't believe that phraseology was -- was
12 listed here in the recommendations. If you could
13 point out to me where it was and direct me to it, I'd
14 read it, but from what I read, the -- the strategies,
15 implications and recommendations for RJR do not refer
16 to those -- that phraseology that you have pointed
17 out to me.

18 Q. And I'm -- and I'm not trying to pin you down to
19 specific words. I'm -- I'm talking about the
20 first-brand strategy that's referred to on page
21 seven; that is, just that part of the recommendation
22 here was that RJR turn more to a first-brand strategy
23 for younger adult smokers than a switching strategy.

24 A. But where does it say that?

25 Q. I'm -- I'm asking based upon the point that I --

1 or the part that I pointed out to you whether or not
2 that is a true statement.

3 A. Well let me -- let -- can I --

4 Q. Sure. Why don't we --

5 A. Can you tell me where that other point was
6 because I don't see it when I -- when I review it.

7 Q. I'm not suggesting it's anywhere phrased as I
8 phrased it. I'm asking you based upon the
9 information from the report and your having been one
10 of the people who prepared the report, if that is a
11 true statement, that what was being recommended in
12 this report, whether in specific words like that or
13 the tenor of the entire report, was that RJR move to
14 a first-brand strategy with regard to younger adult
15 smokers.

16 MR. TAYLOR: Objection. I do think he's
17 answered that question, but --

18 A. Let me make a statement then in general
19 regard -- relating to what you're talking about.
20 What the report recommends is an increased importance
21 and marketing attention to young adult smokers, 18 to
22 24. That is what it recommends.

23 Now, the point here talks about the fact that
24 people become 18, 19, 20, 21 and so on, and that if
25 you improve your performance among 18- to 24-year-old

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1 smokers, then we believe that -- I believe -- let me
2 speak for myself. I believe that when people adopt a
3 first usual brand when they are adults, they will
4 adopt you in much larger numbers than you have, and
5 then you will accrue the benefits that are cited in
6 the point two here that we are responding to.

7 And -- and that is the only degree to which I'd
8 say we would switch strategies, if you will. We
9 would put much more importance on increasing our
10 share among 18- to 24-year-old smokers.

11 Q. And the benefits that would flow from having
12 those 18-, 19-, 20-year-olds smoke an RJR product as
13 a first brand would also attach if children under the
14 age of 18 first began smoking RJR products as a brand
15 of choice; correct?

16 A. The report does not deal with that and nor am I
17 prepared to offer an opinion about what anybody under
18 18 does. That is not what we're talking about in the
19 report.

20 Q. But if the statement you made is true, that
21 there are these benefits that will flow from an
22 18-year-old adopting an RJR product as a first brand,
23 those same benefits would flow if a 17-year-old
24 adopted an RJR product as a first brand; correct?

25 MS. BIXENSTINE: Objection, asked and

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1 answered.

2 A. Yeah, I have answered it and I said I don't
3 know. That is my answer.

4 Q. And the same would be true for anyone under 18,
5 whether it was 17 or 16? You don't know whether the
6 same benefits would flow to RJR if they adopted an
7 RJR product as a first brand at the age of 16?

8 A. I have done no studies among that market that
9 deal with the question that you are talking about.

10 Q. But you did know as of the time the re -- this
11 report was written that more than 50 percent of all
12 men became regular smokers if they became smokers
13 before the age of 18; correct?

14 MS. BIXENSTINE: Objection,
15 mischaracterizes the prior testimony.

16 A. I have already said what I say about that, and I
17 read the reports that you had cited. I did not
18 prepare those reports and I have no comment on --
19 on -- on -- no further comment on those reports.

20 Q. And the reason that the first brand selection
21 would garner these benefits for someone who started
22 at 18 or 19 or 20 is because of the whole issue of
23 brand loyalty of cigarettes; correct?

24 A. The benefits we are talking about here are
25 benefits of market share among people that currently

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1 smoke, and that -- that would be one of the reasons
2 they would garner that attitude, is because brand
3 loyalty combined with increase rate per day over time
4 would generate an increasing volume.

5 Q. And you --

6 You would agree, would you not, that -- that
7 cigarettes are among the most brand-loyal products in
8 the country?

9 A. That would be my opinion, yes.

10 Q. And so that that was really where the benefits
11 from first brand selection would flow, is that they
12 are so brand loyal and a first brand would tend to
13 be, based on the information RJR had, a brand of
14 choice that would last for some considerable time; is
15 that correct?

16 A. That would be by definition. It would be their
17 first usual brand, and meaning that would be one that
18 they would indeed stay with over time.

19 MR. FINZEN: Would you mark this, please,
20 next.

21 (Plaintiffs' Exhibit 1032 was marked
22 for identification.)

23 BY MR. FINZEN:

24 Q. Mr. Nordine, I'm now going to show you what's
25 been marked as Plaintiffs' Exhibit 1032, Bates

1 numbered 502033156 and 3157. I ask you to look at
2 that document and tell me whether you can identify
3 it. Would you like to take time to read it?

4 A. I would, yes.

5 MR. FINZEN: Why don't we do that off the
6 record.

7 THE REPORTER: Off the record, please.

8 (Discussion off the record.)

9 (Mr. Murray was present after the
10 discussion off the record.)

11 MR. MURRAY: Stephen Murray for plaintiffs
12 in the Arch versus American Tobacco, et al., case
13 pending in the Eastern District of Pennsylvania. I
14 have reviewed what is attached as Exhibit C to the
15 protective order relating to the deposition of
16 Richard C. Nordine, and counsel -- as counsel for the
17 Arch plaintiffs, I will agree to be bound by the
18 terms of Exhibit C to that protective order, in
19 addition the terms of the affidavits I've already
20 signed.

21 MR. TAYLOR: Sure, which relate to
22 Exhibits A and B of that protective order, and I'll
23 give you a copy of the protective order at the
24 next -- at the next break.

25 MR. MURRAY: Thank you.

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- 1 BY MR. FINZEN:
- 2 Q. Off the record, Mr. Nordine, you've had a chance
- 3 to review Plaintiffs' Exhibit 1032?
- 4 A. Yes.
- 5 Q. And is this a document that you have seen
- 6 before?
- 7 A. Apparently. I have no specific -- I have got
- 8 very little specific memory of this, but I wrote it,
- 9 I believe.
- 10 Q. It's dated April 13 of 1984. Do you see that?
- 11 A. I see that, yes.
- 12 Q. And it -- the by line "FROM" has your name on it
- 13 and the second page has a typed name "Richard C.
- 14 Nordine" with a signed one name, "Dick," above that.
- 15 A. Correct.
- 16 Q. Is that your signature?
- 17 A. That is my signature, yes.
- 18 Q. And it is addressed to Mr. Fackelman.
- 19 A. Yes.
- 20 Q. And was he your boss at this time?
- 21 A. I believe so, yes.
- 22 Q. And a carbon copy is -- is going to Joan Whaley,
- 23 who was the outside consultant on the report; is that
- 24 correct?
- 25 A. That is correct.

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1 Q. Now you --

2 You state in the memo that the purpose is to
3 explain an idea that is suggested in the younger
4 adult smoker opportunity analysis. Do you see that?

5 A. Yes.

6 Q. And you say in the second paragraph, the third
7 sentence, "It is relatively easy for a brand to
8 retain 18-year-old smokers once it has attracted
9 them."

10 A. Correct.

11 Q. Do you see that?

12 Is that in fact something that you believed was
13 an idea that was suggested in the younger adult
14 smoker opportunity analysis?

15 A. Yes.

16 Q. And the last sentence of the second paragraph
17 says the -- "There is a principle of inertia: 'A
18 smoker at rest tends to stay at rest.'" Do you see
19 that?

20 A. Yes.

21 Q. Is that also part of what you believe was the
22 idea or an idea suggested by the younger adult smoker
23 opportunity analysis?

24 A. Yeah, it's a restatement of the first one we
25 just talked about.

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1 Q. And is it --

2 Is it true, sir, that both of those statements
3 stated either way again depend upon the notion of --
4 of brand loyalty to be correct statements?

5 A. That would be correct, yes.

6 Q. And on the second page of the document in the
7 first paragraph after the bullet points --

8 A. Uh-huh.

9 Q. -- you say it is -- "In a very real sense, the
10 principle that is suggested by the Younger Adult
11 Smoker Analysis is much broader and also applies to
12 switching" and "It can be stated as: Attract a
13 smoker at the earliest opportunity and let brand
14 loyalty turn that smoker into a valuable asset." Do
15 you see that?

16 A. I see that.

17 Q. Is that also a -- a statement that you believe
18 is a principle idea that is being suggested in the
19 younger adult smoker opportunity analysis?

20 A. Yes, although it is clear by the context that I
21 am talking about adult smokers here in case you're
22 trying to infer anything other than that.

23 Q. Well I -- I'm just asking now --

24 A. But that -- I said yes, that is true.

25 Q. Okay. And in the second-to-the-last paragraph,

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1 the end of the first sentence there says "... the
2 Younger Adult Smoker Analysis does an effective job
3 of explaining how the market works." Do you see
4 that?

5 A. I see that.

6 Q. Is that also a statement that you believe is --
7 is true at the time that you wrote it?

8 A. Yes.

9 Q. And based upon -- ah, strike that.

10 Did that become following the publication of the
11 younger adult smoker opportunity analysis report
12 RJR's strategy, to attract a smoker at the earliest
13 opportunity and let brand loyalty turn that smoker
14 into a valuable asset?

15 A. I don't know. The -- the -- the thing is really
16 addressing brands that traditionally rely on older
17 switchers, whether that be a low-price brand, a
18 low-tar brand or brands that typically have little
19 appeal to younger adult smokers, but other -- other
20 types of brands are much more likely to get people
21 who are 35 years and older. And what the -- what the
22 principle is in this thing is to say if it's
23 typically 35 to 50 is the best age for a switcher to
24 come to your brand, target 35 to 40; don't target 45
25 to 50 because you want to -- to get that switcher,

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1 that older switcher in this case, before your
2 competition does.

3 And I -- I'm just trying to make it clear what
4 the memo and -- and the principle really is
5 involving. And when I say it's relative to switching
6 strategies, it refers to brands that typically are
7 trying to get switchers who are older than younger
8 adults. That's the end of my -- my comment on
9 that -- on that.

10 Q. I would move to strike everything after, "I
11 don't know" as nonresponsive.

12 Did you believe following the issuance of the
13 younger adult smoker analysis that attracting a
14 smoker at the earliest opportunity and letting brand
15 loyalty turn that smoker into valuable -- into a
16 valuable asset was critical to RJR's long-term
17 performance and profitability?

18 A. I believe that was a recommendation in the
19 report, and I believed the recommendation that was in
20 the report.

21 Q. And would you also agree that as of 1984 the
22 battle for switchers was becoming increasingly
23 difficult and more costly all the time?

24 A. It was always pretty difficult. I didn't know
25 that there was a great increase in the difficulty.

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- 1 It was always very difficult. There -- so I don't
2 know if it was getting harder or easier or what. It
3 was difficult, I believe, yes.
- 4 Q. If you have the report still there, I'd like to
5 ask you to turn to page 38, Bates numbered last four
6 numbers 8511.
- 7 A. I have it here.
- 8 Q. And that's labeled at the top of that page
9 "PRICING."
- 10 A. Yes.
- 11 Q. Actually let me -- before you look at that page,
12 let me -- keep your thumb there, if you would.
- 13 A. Okay, I've got it.
- 14 Q. Turn back to Roman -- page Roman numeral iv near
15 the beginning, of the page Bates numbered 8468.
- 16 A. Okay.
- 17 Q. And at the top of that page there's a bullet
18 point called "External factors."
- 19 A. Yes.
- 20 Q. And there are two factors that are mentioned,
21 social acceptability and pricing. Do you see that?
- 22 A. Yes, I see that.
- 23 Q. And it says both require careful understanding
24 and execution to reach younger adult smokers.
- 25 A. Uh-huh.

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1 Q. Now if you would, flip back to page 38.

2 A. Okay.

3 Q. And I would ask you to take a moment to read the
4 first two paragraphs under "Opportunity Analysis."

5 A. Okay.

6 Okay, I've read it.

7 Q. Would you agree that one of the reasons early on
8 in the summary price was identified as an external
9 factor because younger adults are particularly price
10 sensitive when it comes to purchasing cigarettes?

11 A. Price was a major issue to the company because
12 the volume of the industry dropped substantially;
13 people switched to low-priced brands, which are, I
14 believe, less profitable to the company, and quite a
15 few stopped smoking. I -- I wouldn't be surprised
16 that this was probably the first time anybody's ever
17 looked at to what degree pricing influenced different
18 demographic groups, so I would say this would be news
19 as opposed to a reason why the company was interested
20 in it.

21 Q. I'm talking about you as the report drafters, is
22 this one of the reasons you mentioned price as an
23 important external factor in the summary, because
24 your analysis had showed that the studies indicate
25 the price had a much stronger effect on younger

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1 adults, particularly males, than on any other
2 age-group?

3 A. Yes, this would be a reason that we thought that
4 was a significant thing. It would affect the results
5 of the -- of the study.

6 Q. And since it was a study that was aimed at
7 understanding younger adult smokers --

8 A. Uh-huh.

9 Q. -- it was an important factor with regard to
10 younger adult smokers; correct?

11 A. That it would be something people would need to
12 consider.

13 MR. FINZEN: Mark that, please, next.

14 MR. TAYLOR: He's finished with this one.

15 (Plaintiffs' Exhibit 1033 was marked
16 for identification.)

17 BY MR. FINZEN:

18 Q. Showing you, Mr. Nordine, what's been marked as
19 Plaintiffs' Exhibit 1033, Bates numbered 50198 8846
20 through 8849, ask you to look at that, tell me
21 whether you can identify it. Do you want some time
22 to review it?

23 A. Yes.

24 MR. FINZEN: Off the record, please.

25 THE REPORTER: Off the record, please.

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1 (Discussion off the record.)

2 BY MR. FINZEN:

3 Q. Off the record, Mr. Nordine, you had a chance to
4 review Plaintiffs' Exhibit 1033. Can you identify
5 this document.

6 A. Well the subject is "ESTIMATED CHANGE IN
7 INDUSTRY TREND FOLLOWING FEDERAL EXCISE TAX
8 INCREASE." Is that what you mean?

9 Q. Have you ever seen this document before?

10 A. I don't recall seeing it before.

11 Q. This document bears the date of September 20,
12 1982, and it is reported to be from D. S. Burrows.
13 That's Diane Burrows?

14 A. That's correct.

15 Q. To Mr. P. E. Galyan?

16 A. That is correct.

17 Q. Who is Mr. Galyan?

18 A. He worked in the forecasting area of RJR.

19 Q. And at this point in time, Ms. Burrows worked
20 for you; is that correct?

21 A. I don't believe so. I believe she worked for
22 P. E. Galyan probably. I --

23 Q. At what --

24 A. I believe. You know, I don't know, but I'm
25 presuming that.

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1 Q. Do you have any recollection of the first date
2 that Ms. Burrows came to work in your area with you?

3 A. No, I don't.

4 Q. Do you recall seeing the information that's
5 contained within this document while you were an
6 employee at RJR?

7 A. I have no specific memory of that. It could be
8 used in the report we just went over for all I know.
9 I do not recall getting this memo, for instance, and
10 I see the sources are frequently HEW and things that
11 have been used in other documents, too, so I really
12 don't know if I've seen these specific figures or
13 not.

14 Q. The cc on the last page is to MDIC.

15 A. Yes.

16 Q. Do you see that?

17 A. Yes.

18 Q. What does that refer to?

19 A. The information center. It would be Marketing
20 Development Information Center, I believe.

21 Q. And was that a -- a repository for different
22 trend studies or what -- what --

23 A. Just a repository for documents as well as
24 outside information that the company got. They had
25 books in there and -- it was -- it was a library

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1 function basically.

2 Q. Now in this report, Ms. Burrows under the
3 analysis section says that, in the first paragraph,
4 last sentence, "Since the Industry growth rate
5 depends on new smokers, losses in these groups can
6 change the direction of the Industry trend." Do you
7 see that?

8 A. Yes, I see that.

9 Q. And in the earlier section above under
10 "Background," she lists the incidence of price
11 elasticity for 20- to 25-year-old men and 12- to
12 17-year-olds, both male and female. Do you see
13 that?

14 A. I see that.

15 Q. And she says before those bullet points that a
16 major implication of the NBER model she was using was
17 that young people are very price sensitive.

18 A. Uh-huh.

19 Q. Is that something that you were aware of before
20 you undertook the work of -- of producing the younger
21 adult smoker strategies and opportunities report?

22 A. I don't think I was personally aware of it. I
23 presume Diane was since she wrote the report. I
24 don't recall being -- being aware of that, or if I
25 was, I didn't consider it to be particularly

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1 important. It doesn't stand out in my memory.

2 Q. And she goes on to report the HEW information
3 available as of 1982 with regard to the date at which
4 male smokers begin to smoke. Do you see that?

5 A. Which page are you referring to?

6 Q. The bottom of the first page and over to the top
7 of the second page.

8 A. Yes, I see that.

9 Q. And in this compilation of data, at this point
10 by Ms. Burrows, it shows that now approximately 56
11 percent of all male smokers become smokers by the age
12 of 17. Do you see that?

13 A. That's what the number is in the chart, yes.

14 Q. And compared to the data we looked at in the
15 earlier exhibit, the median starting age has now
16 dropped to 16.7 years; is that correct?

17 A. I don't know. I don't recall.

18 Q. Is that what it says on the page under the --
19 under the chart of ages 12 to 25?

20 MR. TAYLOR: It says "Median Starting Age
21 equals 16.7 (50:50 Probability)."

22 A. I see, yeah, the note at the bottom of the
23 table. Yes, it says that on the chart.

24 MR. TAYLOR: We can read.

25 A. I don't know how it compares to some earlier

1 figure, though. I don't recall the earlier figure
2 you mentioned.

3 Q. Do you recall the earlier document that we
4 looked at that showed a median starting age of 17
5 years?

6 A. I don't specifically recall it, no.

7 Q. When Ms. Burrows reports that the industry
8 growth rate depends on new smokers and losses in
9 these groups can change the direction of the
10 industry, she's referring to losses of all new
11 smokers, even those under the age of 17, is she not?

12 A. I don't know what she is referring to.

13 Q. Is that a -- a fair reading of this document as
14 you read it, that that's what she was referring to?

15 A. I don't know.

16 Q. She goes on on page three to conclude an
17 estimate of the loss among teenagers due to the price
18 elasticity she reported on the first page. Do you
19 see that at the top of the page?

20 A. Second paragraph.

21 Q. Yes.

22 A. I see the sentence, yes.

23 Q. So that when she is referring to on the first
24 page loss in these groups can change the direction of
25 the industry, is it fair to say that she is referring

1 to the loss in all of these groups she's reporting on
2 page three as a result of price elasticity, including
3 12- through 17-year-olds?

4 A. You know, I don't know. This is an internal
5 document for the purposes of forecasting, and what
6 they are doing here I presume -- I don't know and I
7 haven't seen this -- is they are talking about
8 forecasting the demands for cigarettes. Now I have
9 never worked in the forecasting group and I'm not
10 sure what they're trying to do with this memo or what
11 implications they are making of this. I haven't read
12 this before I got here, so I don't -- I don't know
13 what somebody else is trying to do in a memo they
14 wrote.

15 Q. This is not information that you were aware of
16 at any time while you were employed at RJR?

17 A. What -- what information? You mean the
18 elasticity model of the NBER? Is that what you're
19 talking about?

20 Q. And the number of losses of smokers in the
21 under-18 age-group that would result from a price
22 elasticity of negative 1.19 percent.

23 A. You know, I may have been aware. I may not have
24 been aware. I don't recall. I think some figures
25 were used in the report that we just talked about

1 that were somewhat similar to what we're talking
2 here, so I must have been aware of something, but I
3 don't -- I don't specifically recall what I was aware
4 of in 1982.

5 Q. And based upon her hypothesis here, these losses
6 come from the fact that the price elasticity will be
7 a barrier to these people becoming smokers; correct?

8 MS. BIXENSTINE: Objection.

9 A. I --

10 MS. BIXENSTINE: He's already told you he
11 doesn't know what her intent was --

12 MR. FINZEN: Objection is "objection," --

13 MS. BIXENSTINE: -- and he hasn't seen the
14 document before.

15 MR. FINZEN: -- is all you need to say,
16 Counsel. You know that.

17 MS. BIXENSTINE: You're badgering the
18 witness.

19 MR. FINZEN: I'm not badgering the
20 witness.

21 MS. BIXENSTINE: I think you are.

22 A. In answer to your question, I don't know.

23 Q. Okay. Following the issuance of the younger
24 adult smoker strategies and opportunities report, RJR
25 did set about to implement the strategy of getting

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1 first brand selection among younger adult smokers,
2 did it not?

3 A. I don't know.

4 MR. FINZEN: Mark this as next, please.

5 (Plaintiffs' Exhibit 1034 was marked
6 for identification.)

7 BY MR. FINZEN:

8 Q. Mr. Nordine, let me hand you now Plaintiffs'
9 Exhibit 1034, which has marked Bates number 50203
10 4727 and 4728. I'd ask you to please review that and
11 tell me whether you can recognize that document. Do
12 you need some time?

13 A. Yes, I do.

14 MR. FINZEN: All right. Off the record,
15 please.

16 THE REPORTER: Off the record, please.

17 (Discussion off the record.)

18 BY MR. FINZEN:

19 Q. Mr. Nordine, off the record you've had a chance
20 to review Plaintiffs' Exhibit 1034, is it?

21 A. Yes.

22 Q. And can you identify this document? Have you
23 seen this before?

24 A. The -- the document was written by me and the
25 signature is my signature.

- 1 Q. And it bears the date of July 16, 1984; is that
2 correct?
- 3 A. That's correct.
- 4 Q. And it is addressed to a number of people:
5 Diane Burrows?
- 6 A. Yes.
- 7 Q. S. Y. Evans?
- 8 A. Yes.
- 9 Q. Who is that?
- 10 A. I believe she worked in marketing research. I'm
11 not sure.
- 12 Q. M. D. Harris?
- 13 A. I'm not sure.
- 14 Q. D. S. Johnson?
- 15 A. I'm not sure.
- 16 Q. And then Ms. Whaley, who was the consultant on
17 your study?
- 18 A. Yes.
- 19 Q. The subject is listed as "THOUGHTS ON YOUNGER
20 ADULT SMOKER STUDY."
- 21 A. Uh-huh.
- 22 Q. As I read this memorandum, Mr. Nordine, you were
23 suggesting that a study be undertaken in order to
24 identify the key ideas that sort of flowed out of the
25 younger adult smoker opportunity analysis.

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- 1 A. Correct.
- 2 Q. And you highlight, it looks like, four major
- 3 areas that needed to be encompassed within the
- 4 study?
- 5 A. I don't have highlighting on the copy I'm
- 6 looking at here.
- 7 Q. Well --
- 8 A. What do you mean by highlighted?
- 9 Q. That's my choice of words. You -- you -- you
- 10 suggested.
- 11 A. I put Roman numerals on three things. Is that
- 12 what you mean to say?
- 13 Q. Well four things, if I'm --
- 14 A. Okay.
- 15 Q. -- reading right, going on to the second page.
- 16 MR. TAYLOR: Actually not Roman numerals,
- 17 but --
- 18 A. Arabic.
- 19 Q. Arabic numerals for four concepts, ideas. What
- 20 would you call them?
- 21 A. They're each points with discussion, --
- 22 Q. Okay.
- 23 A. -- I guess what I would call them.
- 24 Q. Is it safe to say that these were four major
- 25 areas that the study should include?

1 A. Yeah, they're four that I singled out as being
2 worthy of attention.

3 Q. The first one is "What types of attitudes do
4 smokers have toward brands?"

5 A. Uh-huh.

6 Q. The second one was trends that exist among
7 younger adult in terms of smoking incidence --
8 demographic or life-style.

9 A. That's correct.

10 Q. The third was "Are brands significantly out of
11 touch with the value and lifestyles of younger
12 adults? What are the key motivations and lifestyles
13 and how do they relate to beliefs about existing
14 brands?"

15 A. Yes.

16 Q. Correct?

17 And number four was "What are the product wants
18 of younger adult smokers? How well do existing brand
19 styles measure up?"

20 A. That's correct.

21 Q. Was a study ultimately conducted that looked at
22 those four issues?

23 A. I think so, although I'm not sure that -- I'm
24 not sure that -- that any -- you know, I'm not sure.

25 Q. Do you recall doing a study within the year

1 following the issuance of the February 29th younger
2 adult smokers report?

3 A. A study dealing with what?

4 Q. Any --

5 Do you recall doing a study within a year after
6 the issuance of that report of any kind?

7 A. Yes, I -- I guess I -- I guess I do. I don't
8 know the timing of my studies real well.

9 Q. Would --

10 MR. TAYLOR: Don't guess.

11 Q. Would that have been the study that's referenced
12 in this memo, whenever it was done?

13 A. It could have been.

14 Q. As you sit here today, you have no recollection
15 of the details of conducting any study of the type
16 referenced in Exhibit 1034?

17 A. I don't know the link between this particular
18 memo and any other work that might have come down.
19 That -- that is what I'm missing.

20 Q. Regardless of the time, do you have any
21 recollection of ever conducting a study that is
22 suggested in Plaintiffs' Exhibit 1034?

23 MS. BIXENSTINE: Objection, asked and
24 answered.

25 A. I recall doing studies that did deal with some

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1 of these issues, I believe, yes.

2 Q. And over what time period were they done?

3 A. I don't recall the specific timetables.

4 Q. Was there more than one study that addressed the
5 four issues that you raise in this memorandum?

6 A. I don't know that a study was done to raise
7 these four things. These may have had an input and
8 they may not have. This was a thoughts on this for
9 discussion, so I don't know to what degree this memo
10 contributed to further work. They were working
11 thoughts.

12 Q. Well do you recall -- let's take them one at a
13 time then.

14 Do you recall a study being done following
15 July 16th of 1984 that addressed what types of
16 attitudes smokers have towards brands?

17 A. I wish you'd be more specific because really
18 almost all studies address people's attitudes towards
19 brands, and that -- I could say yes, I can recall
20 studies because all studies deal with that. So I
21 wish you'd be more specific in asking what's -- you
22 know, what you're looking for.

23 Q. Well the subject of this memo is "THOUGHTS ON
24 YOUNGER ADULT SMOKER STUDY," so I'm referring to was
25 there a younger adult smoker study that was done

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- 1 after July 16, 1984 that addressed the issue of what
2 types of attitudes smokers have towards brands?
- 3 A. Yes, there was a young adult study done.
- 4 Q. Was there more than one?
- 5 A. I don't know.
- 6 Q. The one that you recall, when was it done?
- 7 A. I don't know the specific dates. It was
8 sometime after this.
- 9 Q. Do you know what the title of that study was?
- 10 A. Not specifically I don't, no.
- 11 Q. Did that study confirm your belief that people
12 form beliefs and attitudes toward brands over time
13 and many of these views are set when they are younger
14 adult smokers?
- 15 A. Yes. Loosely speaking, yes, that -- I would
16 agree with that.
- 17 Q. And did that study confirm that it is hard to
18 change a smoker's mind once they are made up?
- 19 A. No, that study probably didn't.
- 20 Q. Did that study confirm your belief that that --
21 that is why younger adult smokers are so important,
22 because they form attitudes and beliefs when they are
23 younger adult smokers with regard to brand
24 selection?
- 25 A. I'm sorry, could you -- could you repeat it

1 again?

2 Q. Sure.

3 A. I'm getting scrambled here.

4 Q. Sure. Did that study confirm your belief that
5 younger adult smokers are so important because they
6 form attitudes towards brands that become set when
7 they are younger adult smokers?

8 A. Indirectly, not -- not specifically. Generally,
9 yes, that seemed consistent with that idea.

10 Q. And did that study confirm that brands that fail
11 to do well among younger adult -- younger adult
12 smokers have a hard time coming up with a compelling
13 reason why they should change their existing
14 loyalties and switch brands?

15 MS. BIXENSTINE: Objection to the form.

16 A. I've got to ask you to repeat it again. I --

17 Q. Sure. And did that study confirm that brands
18 that fail to do well among younger adult smokers have
19 a hard time coming up with a compelling reason why
20 they should change their existing loyalties and
21 switch brands?

22 MS. BIXENSTINE: Objection to the form.

23 A. The study didn't have anything to do with that.
24 I mean, that people have hard times improving their
25 brand performance in market is clear from the results

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1 that were achieved by brands. They have many
2 different changes in advertising and changes in
3 trying to be more successful in advertising, and they
4 are generally unsuccessful at doing so.

5 The study really is unnecessary to confirm or
6 deny that particular point.

7 Q. And was there a study done after July 16, 1984
8 that addressed the second issue, and that is "What
9 trends exist among younger adults in terms of smoking
10 incidence -- demographic or lifestyle?"

11 A. Yes. That -- that was investigated.

12 Q. And do you recall when that report was done?

13 A. Sometime after 1984. I don't know the de --
14 the -- the exact date.

15 Q. Do you recall whether there was more than one
16 such report that addressed that issue after this
17 date?

18 A. No, I don't recall there being more than one.

19 Q. And do you recall what the name of that report
20 was or the title?

21 A. I don't remember the name of it exactly.

22 Q. Do you recall what the findings of that report
23 were?

24 A. No, I -- I haven't got a specific mem -- I
25 haven't got a specific recall of -- of the findings,

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1 if you will.

2 Q. And was there a study done after July 16, 1984
3 that dealt with point number three in your memo,
4 whether "Are brands significantly out of touch with
5 the values and lifestyles of younger adults? What
6 are the key motivations and lifestyles and how do
7 they relate to beliefs about existing brands?"

8 A. I can't give you a simple answer to that -- that
9 question. I -- I'm sorry, I can't give you a simple
10 answer to the question.

11 Q. Let me ask you this then: You identify under
12 point three that "One possibility is to use Maslow."
13 Do you see that?

14 A. Yes.

15 Q. Do you recall after July 16th, 1984 a study
16 being done using the concept of the hierarchy that
17 Maslow identifies in terms of -- of looking at the
18 driving motives of younger adults?

19 A. I -- I -- I suspect that wasn't done. It was a
20 think piece, and I don't know that this was ever
21 acted upon, this particular idea in the -- in the
22 report being talked about.

23 Q. Do you know whether any other system was used to
24 study the -- or to study and understand the driving
25 motives of younger adults after July 16, 1984?

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1 A. Well I -- I think I had already said I
2 mentioned -- I remembered one study that was done.
3 Q. I'm talking about specifically with regard to
4 point three, whether brands are out of touch with the
5 values and life-styles.
6 A. I think that -- I -- I think that study that
7 I -- we were talking about dealt with that subject,
8 but I don't think that it decisively -- decisively
9 answered the question that was -- was there. It
10 dealt with it is about all I can say.
11 Q. And that would have been the study you
12 referenced earlier?
13 A. That was done after this -- after the younger
14 adult smoker study that we talked about was done.
15 Q. Was the issue referenced in your point four
16 addressed in that study, "What are the product wants
17 of younger adult smokers? How well do" the "existing
18 brand styles measure up?"
19 A. I don't -- I don't know. Nothing stands out in
20 my mind about that particular point.
21 Q. Do you recall whether a study was done after
22 July 16th of 1984 that addressed how trends get
23 started among younger adults?
24 A. The subject was dealt with. I don't recall the
25 specifics of what the findings were. I don't think

1 anything was found that was -- was particularly
2 important or anything. I -- it doesn't stand out in
3 my mind.

4 Q. Was it reasonably well understood in the market
5 research department that if someone could establish a
6 fad within the younger adult market, that they could
7 have a significant in road into that market?

8 A. There were -- there were people that felt that
9 way, I -- I guess.

10 Q. And were you one of them?

11 A. I don't know. It sort of depends on what you're
12 talking about. I mean, a generic statement like
13 that, it's hard to agree with it. It would depend
14 upon what people's ideas were to me.

15 Q. Well with reference to marketing to younger
16 adults and the point that's made in your memorandum
17 on page two near the bottom where you have the two
18 points set aside, is understanding how fads or trends
19 have been successful in the past something that you
20 believed was important to be studied by RJR with
21 regard to its marketing for the future?

22 A. Well it was in the sense that that point was
23 made in the younger adult opportunity analysis and we
24 were trying to follow up on the points that were made
25 in that particular study, so yes.

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1 Q. And again, whether it was the study you've
2 already mentioned or some other study later on, did
3 such a study get done or was it undertaken by RJR on
4 the basis of your suggestion here?

5 MS. BIXENSTINE: Objection, asked and
6 answered.

7 A. Come again. I'm getting --

8 Q. Sure.

9 A. -- caught between objections and reading this
10 and trying to follow the question.

11 MR. TAYLOR: Well it's 4 o'clock and we're
12 all getting a little tired.

13 Q. I'm trying to -- I'm just trying to find out
14 whether or not -- whether it was in the study you've
15 already mentioned or some other study you can recall
16 whether there was a study undertaken to attempt to
17 understand the -- what had been an effective way of
18 developing a trend or a fad among other products to
19 be utilized for RJR marketing in the future.

20 MR. TAYLOR: I hate to compound the con --
21 the colloquy, but if you have such a study, I suggest
22 a more expeditious way to deal with it might be to
23 present it and talk about it, a suggestion and
24 apology for interruption.

25 A. I'm just at a loss to how to respond to that

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1 question. I'm not sure what you mean and I -- I

2 just --

3 Q. Well did RJR --

4 A. I have a hard time finding a basis for saying

5 "yes" or "no" or "I don't know." It's just

6 difficult to follow what the -- with what the -- what

7 the point is. All there is is this is a think piece

8 on things, and I'm not sure -- altogether sure right

9 now what the heck I meant by some of this stuff let

10 alone what somebody else might have been taking it to

11 mean, so it's -- it's difficult to respond.

12 Q. Sure, but the question I guess is that if you

13 can recall there being a study done with regard to

14 successful development of fads or trends in the past

15 that --

16 A. Yes.

17 Q. -- might be utilized for RJR marketing in the

18 future.

19 A. Well there were -- there were -- there was in

20 the younger adult opportunity analysis a list of some

21 of the trends that seemed to correlate with previous

22 brands that had been successful among the younger

23 adult sector, and there was an attempt by RJR to look

24 at what are the current trends because the past

25 trends no longer existed necessarily. So yes, there

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1 was an attempt to identify the clear trends as
2 possible things that could help -- help RJR develop
3 more effective approaches.

4 Q. And while there had been some suggestions, this
5 is some five months after the report and I'm -- since
6 you were suggesting that additional studies be
7 undertaken, I'm simply trying to find out whether a
8 study of that kind was done at that point in time.

9 A. All I'm saying, that yes, the study --

10 MS. BIXENSTINE: Objection, asked and
11 answered.

12 A. -- did follow. I don't recall the specific name
13 that you've asked me, but yes, a study was done.

14 Q. And you don't --

15 That was part of the study you've already
16 mentioned?

17 A. That's correct. I just have been unable to tell
18 you what the name of that study is. It dealt with
19 some of these things, but not necessarily
20 everything.

21 Q. And would that have also included this -- the
22 last of the two points at the bottom of the second
23 page of the memorandum about the rules of thumb for
24 developing effective marketing programs for younger
25 adults?

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1 A. To some degree, yes. Yeah, that would be part
2 of that study.

3 Q. Is it a fair statement, Mr. Nordine, that
4 following the issuance of the report in 1984 on
5 younger adult smokers that it became an RJR marketing
6 plan to increase its young adult franchise?

7 MS. BIXENSTINE: Objection, asked and
8 answered.

9 A. I've got no awareness of what the company's
10 specific plans were.

11 Q. And you were never involved again after issuing
12 that report in any marketing plans with regard to
13 younger adult smokers?

14 MS. BIXENSTINE: Objection to the form of
15 the question, misleading.

16 A. You know, I was always ready to be a consultant,
17 present my views to each of the brand groups, but the
18 brands decided what they were going to do themselves
19 and I did not participate in the development of their
20 programs.

21 Q. Had you had occasion before issuing that report
22 to look back to determine what RJR's position had
23 been on marketing to younger smokers in the past?

24 A. What do you mean "younger smokers"?

25 Q. Younger smokers.

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1 (Discussion off the stenographic record.)

2 A. I was asking him for clarification of his
3 question. I asked him what he meant when he said
4 "younger smokers."

5 You know, I'm -- Reynolds markets to 18 and
6 older smokers, and if that's what you mean by young
7 adults, 18 to 24, yes, then I'm aware of a lot of
8 things. Reynolds does not market to underage
9 smokers.

10 Q. Okay. And what specifically had you looked back
11 to examine with regard to RJR's marketing programs
12 with regard to younger smokers in the past? What did
13 you see?

14 A. Well I've always made it -- the whole time I was
15 at Reynolds, I always -- I always made it my point to
16 monitor the company's share among specific smoker
17 groups. Now so I looked back at data that talks
18 about our share over time for a specific young adult
19 and -- and older groups too.

20 Q. And do you recall seeing evidence that RJR
21 Tobacco had defined the younger adult market for
22 marketing purposes in the past as 14 to 24?

23 A. I -- I'm not aware at any time Reynolds has
24 defined that as a marketing group at any point in
25 time. I've told you that we have data coming from

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1 NFO that had those groups and that was never used for
2 marketing purposes.

3 Q. And nothing you saw in the past ever indicated
4 that RJR had ever defined the 14- to 24-year-olds as
5 a group to which advertising should be directed?

6 A. I have never seen any reason to believe that was
7 true.

8 Q. And you would then be surprised to find out that
9 RJR had ever defined the 14-to-24-year-old group as a
10 group to which marketing and advertising should be
11 directed?

12 MS. BIXENSTINE: Objection, lack of
13 foundation.

14 A. I don't know. Show it to me and I'll see if I'm
15 surprised, but I would -- I mean, ever since I was
16 there, the company religiously almost made sure that
17 it was marketing to adult smokers, and -- and that is
18 the fact that I'm aware of. I don't know what
19 anybody did in 1959 or -- or earlier. I don't even
20 know the people that were at the company then, so I
21 don't know.

22 MR. FINZEN: Mark that, please, as next.

23 (Discussion off the stenographic record.)

24 (Plaintiffs' Exhibit 1035 was marked
25 for identification.)

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1 BY MR. FINZEN:

2 Q. Mr. Nordine, I'm going to hand you what's been
3 marked as Plaintiffs' Exhibit 1035, Bates number
4 50142 1310 through 1335, and ask you to look at that
5 document, sir, and tell me whether you've ever seen
6 it before. I take it you would like some time to
7 look at it.

8 A. I think so.

9 MR. FINZEN: Let's do that off the record.

10 THE REPORTER: Off the record, please.

11 (Discussion off the record.)

12 BY MR. FINZEN:

13 Q. Mr. Nordine, off the record you've had a chance
14 to review Plaintiffs' Exhibit 1035?

15 A. Yes.

16 Q. Is this a document that you've ever seen
17 before?

18 A. Not before today, no.

19 Q. In looking back in -- into the prior marketing
20 records of RJR while you were employed in the
21 marketing research department, had you ever seen
22 reference to a marketing plan that was adopted for
23 1975?

24 MS. BIXENSTINE: Objection to the predicate
25 in the question.

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1 A. I don't know -- I have no reason to believe
2 this -- what is in this material was adopted, and I
3 don't recall seeing their marketing plan for 1975.
4 Q. Move to strike everything before "I don't recall
5 seeing their marketing plan for 1975" as
6 nonresponsive.

7 You started in what month in 1975?

8 A. I think it was June.

9 Q. Would you have been privy to the marketing plans
10 that were in effect for 1975 when you began your
11 employment?

12 A. I don't think so. I was a statistician at the
13 time.

14 Q. When is the first time that you would have been
15 involved in marketing-related projects after you were
16 employed at RJR?

17 A. Could you be more specific, "in
18 marketing-related projects"? I mean, I --

19 Q. Something that you considered a marketing
20 project, I guess.

21 A. I consider all my projects marketing research
22 projects, not marketing projects, so I don't know
23 that -- I was involved to the extent of talking with
24 people and I've -- I've worked a little bit with some
25 marketing people, but I primarily focused on

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1 marketing research in my work for nearly the whole
2 time.

3 Q. And on the first page of Plaintiffs' Exhibit
4 1035, do you recognize the handwriting that's on that
5 page?

6 A. No, I -- I have no idea whose writing that is.

7 Q. And do you recognize the name that's at the top
8 of the page in handwritten form?

9 A. C. A. -- I don't know. Can you read it? I
10 can't. I -- I don't -- the writing isn't very
11 clear.

12 Q. Is that a name that you can identify or
13 recognize as -- as someone you knew at RJR?

14 A. I can't. You know, I can't be sure I can -- can
15 read that. I don't know.

16 Q. The second page has at the top of the page "1975
17 MARKETING PLANS PRESENTATION, HILTON HEAD, SEPTEMBER
18 30, 1974." Do you see that?

19 A. Yes.

20 Q. Are you aware from any information while you
21 were at RJR whether there was a marketing plans
22 presentation held at Hilton Head in September of
23 1974?

24 A. I am unaware of it.

25 Q. Did you become aware while you were at RJR that

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1 from time to time the board of directors would hold
2 meetings away from the company here in Winston-Salem
3 for purposes of considering things like marketing
4 plans?

5 A. I don't know that. I don't know.

6 Q. In this document, the chart two --

7 A. Yes.

8 Q. -- on the first page addresses four key
9 opportunity areas.

10 A. Yes.

11 Q. Do you see that, the first of which is
12 increasing our young adult franchise?

13 A. Yes.

14 Q. And then below the four numbered items, the
15 second sentence references "IN 1960, THIS YOUNG ADULT
16 MARKET, THE 14 TO 24 AGE GROUP" Do you see
17 that?

18 A. I see the sentence.

19 Q. That was how R.J. Reynolds defined the young
20 adult market --

21 MS. BIXENSTINE: Objection.

22 Q. -- within the company, is it not, sir?

23 MS. BIXENSTINE: Objection.

24 A. I don't know. It wasn't at the time I was
25 there; I'll tell you that.

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1 Q. Well you were there within six months to nine
2 months after this --

3 A. That's right.

4 Q. -- document is dated?

5 A. That's right.

6 Q. And your -- it's your testimony that you never
7 saw any reference to a definition of young adult
8 market as being the 14-to-24 age-group?

9 A. That is correct.

10 MR. TAYLOR: I think in fairness, the 1960
11 is some number of more years prior to his
12 employment. I just don't think that's a fair
13 question, sir.

14 A. I can't -- I can't explain the numbers. There's
15 no evidence whatsoever that the company considered
16 anything like that when I was with the company is
17 what I can say, and I don't know really what this
18 presentation you have is. I don't even know if it
19 was ever given for all I know.

20 Q. And as seen in chart number three, the first
21 sentence says "AS SEEN BY THIS CHART, THEY WILL
22 REPRESENT 27 PERCENT OF THE POPULATION IN 1975." Do
23 you see that?

24 A. I see the sentence, yes.

25 Q. And the "THEY" is -- is representing --

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1 reflecting the young adult market, 14 to 24?

2 MS. BIXENSTINE: Objection.

3 A. I don't know.

4 Q. And showing a growth from 21 percent in 1960 to
5 27 percent in 1975; correct?

6 MS. BIXENSTINE: Objection.

7 A. You know, I'm reading it for the first time. I
8 can read the sentence and see what it says same as
9 anybody else. I have no knowledge of what -- what is
10 meant or intended by any of this.

11 Q. And the next sentence that says "THEY," meaning
12 the young adult market, "REPRESENT TOMORROW'S
13 CIGARETTE BUSINESS," that's something that you
14 suggested in your own report in 1984, isn't that
15 correct, that the young adult market represents
16 tomorrow's cigarette business?

17 A. My comments in our previous report dealt with
18 18- to 24-year-old smokers, and I see that there's
19 other ranges in this particular report, so they don't
20 have -- they don't share that.

21 Q. They don't share that, but the representation
22 that they represent tomorrow's cigarette business is
23 shared between this report and your report, correct,
24 for the younger adult smokers?

25 MS. BIXENSTINE: Objection.

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- 1 A. No, I don't know if I've got anything in common
2 with this report at all, so if you're trying to say
3 that I -- that this is the same thing that we're
4 talking about, I don't know. I don't know what
5 they're talking about in this report.
- 6 Q. Well --
- 7 A. I will speak what my report talked about and --
- 8 Q. -- let me ask you this: --
- 9 A. -- I don't need to be linked to this because I
10 have no knowledge of this.
- 11 Q. Let me ask you this then: If -- if we define
12 the young adult market as 18 to 24 -- okay?
- 13 A. We do define it as that.
- 14 Q. And I'm saying for my purpose of my question --
- 15 A. Uh-huh.
- 16 Q. -- that I'm about to ask you, if you define it
17 as 18 to 24, would you agree that they represent
18 tomorrow's cigarette business?
- 19 A. Yes, I would -- I would agree that people pass
20 through that age-group forever, and they -- you know,
21 if brands get them and keep them, they will
22 eventually accumulate great things. And if that's
23 what you mean by represent tomorrow's business,
24 that's true.
- 25 Q. And if I use the definition of young adult

1 smoker as 18 to 24, would you agree that they will
2 account for a key share of the total cigarette volume
3 for at least the next 25 years as of 1975? Would
4 that -- would that be a true statement?

5 MS. BIXENSTINE: Objection.

6 A. I suppose, yes.

7 Q. And would you also agree if you used the
8 definition of young adult smoker as 18 to 24 that a
9 company that increased the share -- their share of
10 that market would be a company for which you could
11 suggest continued growth into the future of market
12 share?

13 A. Yes, I guess I would, but these are all
14 hypothetical questions.

15 Q. I understand.

16 A. I'm not referring to any document here.

17 Q. And would you agree that those things being
18 true, the strategy for a cigarette company to prosper
19 would be clear to direct advertising appeal to those
20 18- to 24-year-old smokers?

21 MS. BIXENSTINE: Objection to the form of
22 the question.

23 A. Can you repeat to me the form of the question --

24 Q. Sure.

25 A. -- because I'm -- I'm --

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1 Q. Sure.

2 A. -- finding it difficult to --

3 Q. Would you agree that if we define young adult
4 smokers as 18 to 24 --

5 A. Uh-huh.

6 Q. -- that the strategy would then become clear to
7 direct advertising appeal to those young adult
8 smokers?

9 MS. BIXENSTINE: Objection, vague.

10 A. We made recommendations in the young adult
11 analysis that we just talked about that said that a
12 brand that would try to improve its share in that
13 group should integrate many things.

14 Q. Including a direct advertising appeal to that
15 group?

16 A. Yes, according -- including advertising appeal
17 to that group, yes.

18 Q. And is there anything that would change the
19 truthfulness of the answers to the questions you just
20 gave me if we changed the age of young adult smokers
21 to 14 to 24 as opposed to 18 to 24?

22 MS. BIXENSTINE: Objection, calls for
23 speculation.

24 A. The truthfulness, hmm. The truthfulness of it,
25 the company would not have considered doing that, and

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1 therefore it is a -- it is a question that has
2 nothing to do with my job at RJR or anything that the
3 company has done in the entire time I've been there,
4 and in that -- I -- I don't see the point to
5 responding to the question about what -- what
6 something might be that isn't. I mean, that isn't
7 the case that the company would deal with that, so --
8 Q. So you just --
9 A. -- I guess I would just -- I'd just say that to
10 you even though it isn't directly answering your
11 question.
12 Q. So you just don't feel that you can answer that
13 one way or the other?
14 A. No, I don't.
15 Q. Okay.
16 MR. TAYLOR: Bruce, is this a good time to
17 stretch?
18 MR. FINZEN: Yeah.
19 THE REPORTER: Off the record, please.
20 (Recess taken.)
21 MR. FINZEN: Thank you.
22 BY MR. FINZEN:
23 Q. Mr. Nordine, would you turn to chart number
24 seven on page 1313 of Plaintiffs' Exhibit 1035.
25 A. Okay.

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1 Q. And that's at the top of the page and it says
2 "THUS, OUR STRATEGY BECOMES CLEAR FOR OUR
3 ESTABLISHED BRANDS," below that Arabic 1, "DIRECT
4 ADVERTISING APPEAL TO THE YOUNGER SMOKERS WHILE," and
5 then it goes on with 2 and 3. Do you see that?

6 A. Yes, I see that.

7 Q. And having previously identified younger adult
8 smokers in the earlier part of this document as 14-
9 to 24-year-olds, while I appreciate you believe the
10 company never would suggest advertising to smokers
11 under the age of 18, this document suggests that they
12 did; isn't that correct, sir?

13 A. I don't --

14 MS. BIXENSTINE: Objection.

15 A. I don't know what this com -- this document
16 represents to the company.

17 Q. And whether that strategy was ever implemented
18 or not, as you sit here today, you -- you don't know
19 one way or the other?

20 A. No, I don't know what, if anything, was done as
21 a result of this document.

22 Q. And in chart number eight, they say "FOR
23 WINSTON, WE'VE FOLLOWED THIS STRATEGY IN DEVELOPING
24 THE NEW 'CANDID' ADVERTISING CAMPAIGN WHICH BROKE
25 SEPTEMBER 16." Do you see that?

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1 A. Yes.

2 Q. Do you remember hearing about the candid
3 advertising campaign for Winston?

4 A. Vaguely, yes.

5 Q. So again, they are suggesting there that they
6 not only are -- that it is clear that that should be
7 a strategy that's implemented but that they have
8 already employed that strategy in the candid
9 advertising campaign for Winston; is that correct?

10 MS. BIXENSTINE: Objection to the form of
11 the question.

12 MR. TAYLOR: Objection.

13 A. I don't know.

14 MR. FINZEN: Would you mark this, please,
15 as next.

16 THE WITNESS: Dan.

17 MR. TAYLOR: I'm sorry.

18 (Plaintiffs' Exhibit 1036 was marked
19 for identification.)

20 BY MR. FINZEN:

21 Q. Mr. Nordine, I'm showing you now a document
22 that's been marked as Plaintiffs' Exhibit 1036, with
23 Bates numbers 50079 6928 through 6934. I'd ask you
24 to look at that document and tell me whether you've
25 ever seen it before.

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1 Do you want to take some time to read it?

2 A. Yes.

3 MR. FINZEN: Off the record, please.

4 THE REPORTER: Off the record, please.

5 (Discussion off the record.)

6 BY MR. FINZEN:

7 Q. Mr. Nordine, you've had a chance to review

8 Plaintiffs' Exhibit 1036 off the record?

9 A. Yes.

10 Q. Have you ever seen this document before?

11 A. Not that I recall, no.

12 Q. And this is a document that is labeled at the

13 top of the first page "R. J. REYNOLDS TOBACCO

14 COMPANY, DOMESTIC OPERATING GOALS." Do you see

15 that?

16 A. I see that.

17 Q. And if you turn the page to page two, it has at

18 the top of the page "Domestic Goals" and a date to

19 the right of November 26, 1974. Do you see that?

20 A. Yes.

21 Q. And that date appears on the remaining pages of

22 the document; correct?

23 A. Correct.

24 Q. This document at the first heading after the

25 title of the document is labeled "MARKETING GOALS";

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1 correct?

2 A. Correct.

3 Q. And it says the "Primary goal in 1975 and ...

4 ensuing years is to reestablish RJR's share of growth

5 in the domestic cigarette industry." Do you see

6 that?

7 A. Yes.

8 Q. Now, as we've seen in some documents earlier

9 today, during the 1970s it's true, is it not, that

10 RJR's share of growth in the domestic market had been

11 declining?

12 MS. BIXENSTINE: Objection.

13 MR. TAYLOR: Maybe you can point to a

14 particular document. I --

15 A. Repeat the question. I --

16 Q. Sure. We've seen some documents earlier today

17 that -- that tended to indicate that during the 1970s

18 RJR's share of growth or RJR's growth in the domestic

19 market for younger adult smokers had been declining;

20 isn't that correct?

21 A. I -- I believe so. I'm not -- I don't recall

22 the specific document. We've been over them.

23 Q. Sure. But -- but --

24 A. I will --

25 Q. -- you recollect that from --

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1 A. I will recollect that RJR's share of young adult
2 smokers was weak, was low.

3 Q. And declining over time in the '70s?

4 MS. BIXENSTINE: Objection.

5 A. I don't recall specifically, no. I don't know
6 if it was declining or not.

7 Q. Well would -- should -- do you want to look at
8 the documents to see whether --

9 A. If you can point it out to me, I'll look at
10 it --

11 Q. Sure.

12 A. -- again and confirm that, if indeed that's the
13 case.

14 (Discussion off the stenographic record.)

15 BY MR. FINZEN:

16 Q. Take a look at Plaintiffs' Exhibit 1026 and --

17 A. 26, okay.

18 Q. -- 1029.

19 A. Okay.

20 MR. TAYLOR: Here's 1029. Let's see if we
21 can find 1026.

22 A. I see the documents.

23 Q. Okay. If you look at 1029 on the Table I --

24 A. Yeah, I think this is it.

25 MR. TAYLOR: Okay, all right.

- 1 A. Uh-huh.
- 2 Q. Share of smokers by age-group.
- 3 A. Yes.
- 4 Q. Okay. And the 14- to 17-year-olds --
- 5 A. Yes, I see the -- the header.
- 6 Q. -- Winston is at 13; Marlboro is at 40?
- 7 A. That's correct.
- 8 Q. In the 18 to 24, Winston's at 15; Marlboro's at
- 9 24?
- 10 A. Yeah.
- 11 Q. If you look at then document Plaintiffs' Exhibit
- 12 1026 on the smoking among the 14-to-7 age-group and
- 13 the first bullet point --
- 14 A. I see the first bullet point. On page number
- 15 three, is it?
- 16 Q. No, the very first page --
- 17 A. Oh, I'm sorry.
- 18 Q. -- of document 1026.
- 19 A. Okay, I'm here.
- 20 Q. The first bullet point, the second sentence,
- 21 "Both WINSTON and SALEM have been steadily losing
- 22 share among this age group," do you see that?
- 23 A. I see that statement.
- 24 Q. Winston was 7.2 in the fall of 1979.
- 25 A. Uh-huh.

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1 Q. And then it goes on to give Salem's share. Do
2 you see that?

3 A. Uh-huh.

4 Q. And then the second bullet point, it lists
5 Marlboro in the same 14-to-17 age-group at 52
6 percent? Do you see that in the second bullet point
7 on 1026?

8 A. Oh, I'm sorry. Yeah, I remember that, yes.

9 Q. Okay. So that between these two documents,
10 between 1972 and '79, the Winston share among 14- to
11 17-year-olds declined, correct, from 13 to 7.2, and
12 Marlboro's increased from 40 to 52 percent?

13 A. Yeah, what I noticed --

14 MS. BIXENSTINE: Objection.

15 A. -- what I noticed in seeing that was Winston's
16 share was -- was roughly the same in 1975 as it was
17 in 1972, and beyond 1975 is when it seemed to have
18 gone down.

19 Q. Where are you looking, sir?

20 A. I'm looking at page three where it gives the --
21 the table of that data, if you will. Do you see the
22 table I mean on page three?

23 MR. TAYLOR: Table I?

24 THE WITNESS: Table I it's called, yes.

25 Q. Yes.

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1 A. Well the point I make is 12 and a half percent
2 would be about the same as the 13 percent that they
3 recorded in '72, so it appears to me that Winston was
4 about the same share in 1975 as it was in 1972, and
5 it only went down after 1975 is how I would read a
6 comparison of that data. So it didn't decline
7 throughout the '70s is what I would -- would say from
8 that. I'm analyzing -- I'm analyzing tables as we
9 go, I'm afraid.

10 Q. Sure, I understand. So what you're saying is it
11 was 13 in '72, 12 and a half in '75, 8.3 in the fall
12 of '79 and -- or spring of '79 and 7.2 in the fall of
13 '79?

14 A. That's what -- that's what the numbers are
15 saying.

16 Q. Sure.

17 MR. TAYLOR: He's saying what these
18 documents indicate.

19 MR. FINZEN: Right.

20 Q. That's what these documents indicate, and that
21 is a decline through the '70s; correct?

22 A. Through the second half it appears, after the
23 Hilton Head conference, I guess.

24 Q. Well even 13 to 12 and a half is a decline, is
25 it not?

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- 1 A. I don't know. They didn't use decimal points on
2 the first table. It might have been 12 and a half.
- 3 Q. Okay. At least as numbers are represented, it
4 was a decline?
- 5 A. Okay. It declined in the second half of the
6 '80s is what those tables indicated. I believe the
7 question was it declined all the way through the
8 '70s, and I'm saying the -- the data you referred to
9 to me say the second half.
- 10 Q. And if you look at Exhibit -- Plaintiffs'
11 Exhibit 1036 --
- 12 A. Yes.
- 13 Q. -- it's stating the primary goal -- the primary
14 goal is to reestablish share of growth. The first
15 bullet point is to "Increase our Young Adult
16 Franchise"; correct?
- 17 A. The first point. This is -- deals with 14- to
18 24-year-olds in this particular document.
- 19 Q. That's correct. That's -- that's the reference
20 that's made to the young adult franchise; correct?
- 21 A. That is not. That's the -- that's the -- yeah,
22 that's the -- that's what's written above that.
- 23 Q. And that's the same reference that was used in
24 Exhibit 1035 to the definition of the young adult
25 franchise or the young adult smoker; correct?

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1 MS. BIXENSTINE: Objection.

2 A. I'm going to find that document again just to
3 tell you I've got my numbers right.

4 Q. Sure.

5 A. That is the presentation at Hilton Head you're
6 referring to?

7 Q. Correct.

8 A. I think that is the same as they were doing in
9 that document.

10 Q. And if you --

11 A. Yes.

12 Q. -- move down to the fifth bullet point under
13 "Increase our Young Adult Franchise," they say "We
14 will direct advertising appeal to this young adult
15 group without alienating the brand's current
16 franchise"; correct?

17 A. That's what the statement reads, yes.

18 Q. And that is also what was reported in the
19 Exhibit 1035 at the Hilton Head report; correct?

20 MS. BIXENSTINE: Objection.

21 A. Well --

22 Q. And I refer you to chart seven, Bates number
23 page 1313.

24 A. I -- I see the -- the sentence.

25 Q. Again, sir, while I understand your belief is

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1 this is not a policy of the company, this is now
2 another document that suggests in 1975 the marketing
3 strategy of the company was to direct advertising
4 appeal to 14- to 24-year-old smokers; isn't that
5 correct?

6 A. You know, I don't --

7 MS. BIXENSTINE: Objection.

8 A. -- I don't know how to interpret this document.
9 It's -- this document is not consistent with my
10 experience at RJR and I wasn't even here when this
11 document was constructed, so I -- I find it awfully
12 difficult for me to speculate upon what somebody else
13 must have meant before I got there.

14 Q. Do you have any information to suggest that
15 what's set forth in Exhibit 1036 as the strategy for
16 the young adult franchise of market direct
17 advertising to 14- to 24-year-olds did not occur?

18 MS. BIXENSTINE: Objection to the form of
19 the question.

20 MR. TAYLOR: Other than what he's already
21 testified to throughout the deposition?

22 MR. FINZEN: Yes, other than -- other than
23 anything he has said up until now, does he have any
24 direct knowledge to suggest this did not happen.

25 A. I have no direct knowledge of this at all.

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1 MR. FINZEN: Would you mark this next,
2 please.

3 (Plaintiffs' Exhibit 1037 was marked
4 for identification.)

5 BY MR. FINZEN:

6 Q. Mr. Nordine, I'm showing you what's been marked
7 as Plaintiffs' Exhibit 1037, Bates numbered 50577
8 5557, ask you to please look at that and tell me
9 whether you've ever seen that document before.

10 A. I do -- I do not recall seeing this before.

11 Q. And this document bears the date at the top of
12 January 23, 1975; correct?

13 A. Correct.

14 Q. And it is addressed to Mr. C. A. Tucker?

15 A. Correct.

16 Q. Do you see that? Do you know who Mr. Tucker
17 is?

18 A. I have heard the name.

19 Q. What was his position with R.J. Reynolds?

20 A. At -- at what point in time?

21 Q. January 23rd, 1975.

22 A. I wasn't there in 19 -- I wasn't there in 1975.
23 I don't know what position he had at that time.

24 Q. Okay. What position did he have when you joined
25 the company?

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- 1 A. I don't know what his title was or what his
2 responsibilities were at any time. I've heard the
3 name is all I can tell you.
- 4 Q. Okay. And the author appears at the bottom of
5 the page in type as J. F. Hind with a signature that
6 appears to be "Jim" above that. Do you see that?
- 7 A. That's correct.
- 8 Q. Do you know who J. F. Hind is?
- 9 A. I have heard that name.
- 10 Q. Do you know what position he had with RJR in
11 January of 1975?
- 12 A. I've been told he had something to do with
13 strategic planning of sorts.
- 14 Q. Do you know what position he had when you joined
15 the company later in 1975?
- 16 A. No. I didn't have any dealings with Mr. Hind.
- 17 Q. And this document references in the first
18 paragraph the Meet the Turk campaign and a new
19 Marlboro blend is another step to meeting our
20 marketing objective. Do you see that?
- 21 A. I see that, yes.
- 22 Q. And then there's a colon and the marketing
23 objective is stated after that; correct?
- 24 A. Correct.
- 25 Q. And it says "To increase our young adult

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1 franchise," and beyond that it says "To ensure
2 increased and longer-term growth for CAMEL FILTER,
3 the brand must increase its share penetration among
4 the 14 to 24 age group which have a new set of more
5 liberal values and which represent tomorrow's
6 cigarette business." Do you see that?

7 A. Yes, that is what the memo says.

8 Q. This again suggests that the presentation at the
9 Hilton Head suggesting the direct advertising to 14-
10 to 24-year-olds was a strategic plan for 1975 for
11 R.J. Reynolds; is that correct?

12 MS. BIXENSTINE: Objection.

13 A. I don't know.

14 Q. Would you take a look at the first page of
15 Exhibit 1035.

16 MR. TAYLOR: 1035.

17 MR. FINZEN: The -- I mean the cover page.

18 MR. TAYLOR: It looks that way to me. No,
19 no, no, he meant the cover page.

20 THE WITNESS: Oh, I'm sorry. Okay.

21 Q. The top line of that, the name we were looking
22 at earlier --

23 A. Yes.

24 Q. -- with the aid of looking at Exhibit 1037, do
25 you recognize that top line now to be Mr. C. A.

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1 Tucker?

2 A. It could well be. It sure matches it well.

3 Q. And the suggestion in the marketing objective
4 with regard to 14- to 24-year-olds in Exhibit 1037 --

5 A. Yes.

6 Q. -- they suggest at the end of that that this
7 represents tomorrow's cigarette business. Do you see
8 that?

9 A. I see the phrase.

10 Q. Would you agree that smokers aged 14 to 24 in
11 1975 represented tomorrow's cigarette business for
12 R.J. Reynolds?

13 MS. BIXENSTINE: Objection, vague.

14 A. I -- I see no basis for me commenting on what
15 somebody wrote in 1975 other than to say from the
16 entire time I was with the company such a thing was
17 totally inconsistent with my experience, and, you
18 know, I can read this over and see what somebody
19 wrote a long time ago, but I have no idea what in
20 fact was done with this.

21 Q. Did you ever work with Jim Hind?

22 A. I don't believe I've even met him.

23 Q. Did you ever meet Mr. Tucker?

24 A. I have met Mr. Tucker.

25 Q. Did you work with Mr. Tucker at all?

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1 A. What do you mean by "work with"?

2 Q. Did your work involve you interacting with him?

3 A. No. I was in meetings with him is about the
4 extent of it.

5 Q. Did you work in meetings or meet him in meetings
6 enough to know whether or not he seemed like a
7 truthful person? Did you form any opinions about him
8 with regard to that?

9 A. No, I don't think that I thought about that at
10 all.

11 Q. Do you know of any reason why Mr. Tucker's name
12 would be on even one document suggesting marketing to
13 14- to 24-year-olds at RJR if that was not a strategy
14 that RJR intended to follow?

15 MS. BIXENSTINE: Objection.

16 MR. TAYLOR: Mr. Tucker's name?

17 MR. FINZEN: Mr. Tucker's name.

18 A. I have no comment upon what somebody else might
19 have thought -- I don't know -- or what somebody did
20 in 1974 before I came to the company.

21 Q. Were you familiar with the Meet the Turk
22 campaign?

23 A. I think so, again vaguely.

24 Q. Would you agree that the design of that campaign
25 was to shift the brand's age profile to the younger

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1 age-group?

2 MS. BIXENSTINE: Objection.

3 A. I have no opinion on that question.

4 Q. Based upon your accepted definition of young

5 adult smokers as being 18 and above, --

6 A. Yes.

7 Q. -- 18 to 24, is that a --

8 A. Uh-huh.

9 Q. Would you agree, based upon the work that you

10 did in your younger smoker analysis project, that

11 shifting those younger adult smokers to a first brand

12 choice of an RJR product is something that wasn't

13 necessarily going to come overnight?

14 A. It would take time to make any changes in market

15 share of any group like that, yes.

16 Q. And that with a strategy to -- to do that, to

17 switch younger adult smokers to any brand, would

18 require patience, persistence and consistency?

19 A. I would say so, yes.

20 MR. FINZEN: Let me take one minute here.

21 MR. TAYLOR: Sure.

22 THE REPORTER: Off the record, please.

23 (Deposition recessed at 5:08 o'clock

24 p.m.)

25

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1 C E R T I F I C A T E

2 I, William C. LaBorde, hereby certify that
3 I am qualified as a verbatim shorthand reporter; that
4 I took in stenographic shorthand the testimony of
5 RICHARD C. NORDINE at the time and place aforesaid;
6 and that the foregoing transcript consisting of pages
7 1 through 263, Volume I, is a true and correct, full
8 and complete transcription of said shorthand notes,
9 to the best of my ability.

10 Dated at Winston-Salem, North Carolina,
11 this 8th day of May 1997.

12

13

14

15 WILLIAM C. LaBORDE

16 Registered Professional Reporter

17 Notary Public

18

19

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25

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1 C E R T I F I C A T E

2 I, RICHARD C. NORDINE, the deponent, hereby
3 certify that I have read the foregoing transcript
4 consisting of pages 1 through 263, Volume I, and that
5 said transcript is a true and correct, full and
6 complete transcription of my deposition, except per
7 the attached corrections, if any.

8

9 (Please check one.)

10

11 ____ Yes, changes were made per the attached
12 (no.) ____ pages.

13

14 ____ No changes were made.

15

16

17 RICHARD C. NORDINE

18 Deponent

19

20 Sworn and subscribed to before me this day
21 of 199__.

22

23

24 Notary Public

25 My commission expires: (WCL)

STIREWALT & ASSOCIATES
P.O. BOX 18188, MINNEAPOLIS, MN 55418 1-800-553-1953